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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS COUNTY

DOUGLAS A. JAMES and EILEEN M.  
JAMES, Husband and Wife,

Plaintiffs

vs.

RECONTRUST COMPANY, an Unknown  
Entity Operating in the State of Oregon, BAC  
HOME LOAN SERVICING LIMITED  
PARTNERSHIP, a Texas Limited  
Partnership, MORTGAGE ELECTRONIC  
REGISTRATION SYSTEM, INC a  
Delaware Corporation, NORTHWEST  
MORTGAGE GROUP, INC. an Oregon  
Corporation.

Defendant.

Case No:

CV11020389

COMPLAINT FOR WRONGFUL  
FORECLOSURE & DECLARATORY  
JUDGMENT

NOT SUBJECT TO MANDATORY  
ARBITRATION

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I. FACTS COMMON TO ALL CLAIMS

1.

The Plaintiffs are Husband and Wife and reside in Clackamas County, Oregon.

2.

The real property which is the subject of this lawsuit is located at 30366 SW Ruth St.  
Unit 70, Wilsonville, OR which is also located in Clackamas Country, Oregon.

//

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EXHIBIT

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3.

Recon Trust Company ("RTC") is an unknown entity which operates in the State of Oregon. RTC is in the business of foreclosing on the real property of Oregonians but RTC is not registered to do business within the State of Oregon. As such any and all actions it takes are ultra virus acts and are void.

4.

BAC Home Loan Servicing Limited Partnership (Servicer) is a Texas limited partnership ("BAC") and on information and belief it is a subsidiary of Bank America Corporation.

5.

Mortgage Electronic Registration System ("MERS") is also not registered to do business within the State of Oregon but on information and belief it is a Delaware Corporation.

6.

On information and belief, in October of 1993, a task force of mortgage finance companies released a "white paper" at an annual convention of mortgage bankers. The paper suggested that an electronic book entry system of tracking mortgage loans would be better for the mortgage lending industry than the legal system of county recording offices. This paper encouraged comments from the real estate finance industry, leading to the formation of a steering committee affiliated with the Mortgage Bankers Association of America (MBA). The MBA is a trade association supported through dues paid by mortgage lending companies that conducts public relations for the industry. The MBA retained Ernst & Young, an accounting firm, to study the feasibility of developing a system that led to the creation of MERS.

In addition to studying the technological and financial hurdles of creating such a system,

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1 the accounting firm also conducted telephone interviews with mortgage loan originators,  
2 servicers, warehouse lenders, custodians, assignment processors, and employees at Fannie Mae  
3 and Freddie Mac. The accountants' primary conclusion was that that the finance industry could  
4 save a lot of money by deciding not to pay the fees that local governments require to record  
5 mortgage assignments. Approximately two years after the initial white paper MERS was  
6 established.

7  
8 7.

9 Northwest Mortgage Group, Inc. ("NWMG") is an Oregon Corporation.

10 8.

11 On or about June 21, 2007 the Plaintiffs purchased the real property described in  
12 paragraph 2. The legal description of the property is included in the trust deed, a true and correct  
13 copy of which is attached as Exhibit 1 to this Complaint which is hereby incorporated by  
14 reference herein.

15  
16 9.

17 Paragraph 24 of the trust deed contains the following language:

18 ***Lender may from time to time remove the Trustee and appoint a successor***  
19 ***trustee*** to a Trustee appointed hereunder. Without conveyance of the Property,  
20 the successor trustee shall succeed to all the title, power and duties conferred upon  
Trustee herein and by Applicable Law. (Emphasis Added)

21 10.

22 In order to purchase the property the Plaintiffs received a loan in the amount of  
23 \$346,438.00 which was secured by a deed of trust recorded in the official records of Clackamas  
24 County, Oregon, as document 2007-055116.  
25  
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EXHIBIT

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11.

NWMG is listed as the "Lender" on the deed of trust.

12.

In the Deed of Trust MERS is named as the "Beneficiary." But MERS did not supply any money for the loan, it did not transfer any of the loan funds nor did it take any economic risks of any kind in the transaction that is the subject of this lawsuit. MERS also never held the deed of trust or the note that is the subject of this lawsuit. MERS never accepted payments for the loan. MERS simply operated a database which was created to circumvent user fees/taxes and replace the property transaction system that has existed in the United States for two hundred years. The trust deed was not given for MERS' benefit and the listing of MERS as the beneficiary under the trust deed is without merit.

13.

On or about April of 2010 the Plaintiffs became delinquent on their loan. On or about July 8, 2011 MERS as the purported Beneficiary of the Deed of Trust for "valuable consideration" purported to transfer the Deed of Trust to BAC. This assignment appears to have been signed on behalf of MERS by Leticia Quintana who represented that she was an Assistant Secretary of MERS.

14.

Ms Quintana's signature in turn was notarized by Ahmad Afzal who is a California Notary Public in Venture County. As part of the notary Mr. Afzal stated that Ms. Quintana appeared before him personally and that she executed the document in her "authorized capacity"

1 and that she was in fact an "Assistant Secretary" of MERS. A true and correct copy of this  
2 document is attached to this Complaint as Exhibit 2 and is hereby incorporated by reference  
3 herein.

4 15.

5 Exhibit 2 was in turn recorded in the official records of Clackamas County, OR on July  
6 13, 2010 at 11:32:56 AM with recording number 2010-041666.

7 16.

8 Also on July 8, 2010 BAC purported to assign the Deed of Trust to RTC. This  
9 document was also signed by Ms. Quintana and was also notarized by Mr. Afzal. But in this  
10 instance the assignment shows Ms. Quintana not as an Assistant Secretary of MERS but rather as  
11 an Assistant Secretary of BAC. Once again Mr. Afzal certified that that Ms. Quintana appeared  
12 before him personally and that she executed the document in her "authorized capacity" and that  
13 she was in fact an "Assistant Secretary" of BAC. A true and correct copy of this document is  
14 attached to this Complaint as Exhibit 3 and is hereby incorporated by reference herein.  
15  
16

17 17.

18 Exhibit 3 was also recorded on July 13, 2010 in Clackamas County, Oregon as number  
19 2010-041667.

20 18.

21 On information and belief Ms. Quintana is a so called "robo-signer" and did not  
22 undertake her duty to review the loan file, is not an officer of either BAC or MERS and did not  
23 have the authority to assign the Deed of Trust on behalf of either BAC or MERS. For this  
24 reason the assignment of the Deed of Trust to BAC from MERS is void.  
25  
26

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EXHIBIT 1

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19.

The appointment of BAC as the successor trustee by MERS is void for other reasons as well. MERS is not the "Lender" as it is required to be under paragraph 24 of the Deed of Trust to appoint a successor trustee. This provision of the Deed of Trust is set forth in full in paragraph 9 of this Complaint. Therefore, MERS did not have the power to make the appointment under the terms and conditions of the Deed of Trust.

20.

In addition, MERS is not the "Beneficiary" of the Deed of Trust as it states that it is in the assignment described in paragraph 13 of this Complaint. ORS 86.705(1) states that the beneficiary is "the person named or otherwise designated in the trust deed *as the person for whose benefit a trust deed is given, or the person's successor in interest...*" (Emphasis Added) MERS is not the "Beneficiary" as it did not have any economic interest in the transaction. MERS is not the "Beneficiary" under Oregon law simply because it says it is and therefore this assignment is void.

21.

On information and belief no "valuable consideration" was transferred from BAC to MERS for the assignment of the Deed of Trust as is stated in Exhibit 2 and for that reason the assignment from MERS to BAC is void.

//

//

22.

Also on July 8, 2010 RTC executed a Notice of Default and Election to Sell. This document was also notarized by Mr. Afzal. A true and correct copy of this document is attached to this Complaint as Exhibit 4 and is hereby incorporated by reference herein. This document states that MERS as the "Beneficiary has declared all sums owing on the obligation secured by said Trust Deed..." MERS did not have this authority. Only the Lender can declare a default under the note. Neither MERS nor RTC are the lender/investor and therefore neither had the authority to declare a default and elect to sell, therefore the Notice of Default is void.

23.

Any assignments made to or by MERS of any interest in the real property that is the subject of this lawsuit are void, as one of the primary reasons for the creation of MERS was and is to avoid the payment of lawful user fees/taxes to Clackamas Country, Oregon. Assignments for the purposes of avoiding taxes are void.

24.

On information and belief the loan that is the subject of this lawsuit was securitized by NWMG shortly after the loan was originated. In order to effectuate the securitization of the loan NWMG, MERS, BAC and other entities currently unknown to the Plaintiffs transferred the Deed of Trust without properly recording it as is required under ORS. 86.735 During the summer and fall of 2007 the vast majority of the loans originated by NWMG were eventually placed in loan pools of Wells Fargo Mortgages and then securitized and sold to investors. Also on information and belief, the original note that was part of the loan transaction, which is the subject of this lawsuit, has been separated from the Deed of Trust during the securitization

1 process and cannot be produced. This note was not endorsed by the holder in favor of the trust  
2 nor ever delivered to the securitization trust.

3 **FIRST CLAIM FOR RELIEF**  
4 **(Wrongful Foreclosure)**

5 25.

6 Paragraphs 1 – 24 are hereby incorporated by reference herein as if set forth in full.

7 26.

8 The foreclosure threatened by the Defendants or one of them is wrongful for the  
9 following reasons and should be halted:

- 10 A) Due to the fact that MERS is listed as the "Beneficiary" of the Deed of Trust the  
11 Deed of Trust has more likely than not been assigned multiple times, without the  
12 recording of those assignments as required by ORS 86.735. Since the beneficial  
13 interest of the trust deed has been assigned multiple times without being recorded, the  
14 trustee lacks the authority to foreclose under ORS 86. 735.
- 15 B) The purported assignment of the Deed of Trust from MERS to BAC on July 8, 2010  
16 is void for the following reasons:
- 17 i) MERS is not a Beneficiary of the Deed of Trust as defined under ORS 86.  
18 705(1) as more specifically set forth in paragraphs 6 and 12 of this  
19 Complaint and therefore it lacked the authority to make the assignment to  
20 BAC, Therefore, the assignment is void.
- 21 ii) On information and belief no consideration was transferred from BAC to  
22 MERS as part of the assignment and therefore the assignment is void.
- 23 iii) Ms. Quintana is not an officer of MERS and on information and belief she is  
24  
25  
26



1 not an employee of MERS and therefore she lacked the authority to execute  
2 the assignment to BAC on behalf of MERS. For this reason the assignment is  
3 void.

4 iv) MERS is not the "Lender" on the loan as it is required to be under paragraph  
5 24 of the Deed of Trust to appoint a successor trustee. Therefore, MERS did  
6 not have the authority to appoint BAC as the successor trustee and the  
7 assignment is void.  
8

9 v) MERS is not authorized or registered to do business within the State of  
10 Oregon and therefore any actions taken by it to effectuate a foreclosure in  
11 Oregon are ultra vires acts and are a legal nullity.

12 vi) MERS was specifically created for the purposes of avoiding the payment of  
13 user fees/taxes associated with the proper filing of documents in the real  
14 property records of Clackamas County, Oregon and other counties in Oregon.  
15 For that reason any assignment of any interest in the property that is the  
16 subject of this lawsuit to, by or thru MERS is void.  
17

18 C) The purported assignment of the Deed of Trust from BAC to RTC also on July 8,  
19 2010 is also void for the following reasons:

20 i) The assignment from MERS to BAC was void for the reasons set forth in this  
21 Complaint and therefore BAC did not have the authority to assign the Deed of  
22 Trust to RTC and that assignment is also a legal nullity.  
23

24 ii) On information and belief the assignment from BAC is void due to the fact  
25 that Ms. Quintana did not review the loan file to confirm that the loan was in  
26

1 default. On information and belief Ms. Quintana is more likely than not an  
2 employee of BAC and not MERS, whose job it is to execute assignments and  
3 other documents as quickly as possible in order to effectuate foreclosures.

4 D) The Notice of Default and Election to Sell by RTC was also void for the following  
5 reasons:

- 6 i) The assignment from MERS to BAC was void for the reasons set forth in this  
7 Complaint and therefore RTC did not have the authority to elect to file a  
8 Notice of Default and Election to Sell and therefore that action by RTC is also  
9 a legal nullity.  
10  
11 ii) RTC is not authorized or registered to do business within the State of Oregon  
12 and therefore any actions taken by it to effectuate a foreclosure in Oregon are  
13 ultra vires acts and are a legal nullity.  
14  
15 iii) RTC did not have the legal authority to file the Notice of Default and Election  
16 to Sell as set forth in paragraph 24 of this Complaint and therefore did not  
17 have the authority to take this action and it is therefore a legal nullity.

18 27.

19 Under the circumstances described in paragraphs 1 – 26 of this Complaint the Plaintiffs  
20 will suffer irreparable harm and they lack an adequate remedy at law and the requested  
21 injunction is tailored to fit the situation and prevent any ongoing violations of Chapter 86 or  
22 Oregon law.  
23

24 //

25 //

26  
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EXHIBIT

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Paragraphs 1 – 26 are hereby incorporated by reference as if set forth in full herein. //

**29.**

Pursuant to ORS.28.010 the Plaintiffs have a substantial legal right that is threatened by the Defendants or one of them, which can be adjudicated by this Court declaring the rights and obligations of the parties herein. The Plaintiffs therefore request the Court declare the following rights and obligations of the parties:

A) That neither MERS, BAC nor RTC is the “Beneficiary” under the Deed of Trust at issue in this case and therefore they individually or collectively do not have the authority to foreclose on the property at issue in this lawsuit.

B) That neither NWMG, MERS, BAC or RTC are currently the “Lender” or the investor under the Note or Deed of Trust at issue in this case and therefore they individually or collectively do not have the authority to declare the note in default and to accelerate it or take any other actions of the actual Lender.

C) That the Deed of Trust that is at issue in the case has been assigned without it being recorded in violation of ORS 86.735 and therefore any unrecorded assignments of the deed of trust are void.

D) That MERS was primarily established for the purpose of avoiding the payment of user fees/taxes and that therefore any assignments to by or through MERS are void as a matter of law.

E) That the foreclosure contemplated by the Defendants or one of them is wrongful and

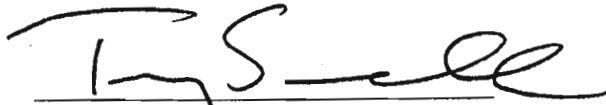
1 should be enjoined until such time as the Defendants can show they are in full  
2 compliance with ORS Chapter 86.

3 **III. PRAYER FOR RELIEF**

4 **WHEREFORE**, the Plaintiffs pray for relief as follows on both their claims for relief:

- 5 1) A declaration that the foreclosure contemplated by the Defendants or one of them is  
6 wrongful and should be enjoined until such time as the Defendants can show they are  
7 in full compliance with ORS Chapter 86.  
8  
9 2) For a declaration as set forth in paragraph 28 of this Complaint.  
10  
11 3) For Plaintiffs costs, disbursements and attorney fees incurred herein under the terms  
12 of the Deed of Trust and Note.  
13  
14 4) Any other relief the Court deems equitable and just.

15 DATED this 14<sup>th</sup> day of February, 2011.

16  
17   
18 Terry Scannel (OSB #853220)  
19 888 SW Fifth Avenue, Suite 650  
20 Portland, Oregon 97204  
21 Tel: (503) 776-0806, Fax: (503) 274-1214  
22 E-mail: terry@scannelLaw.com  
23 Of Attorneys for Plaintiffs

24 ///

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10  
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After Recording Return To:

NORTHWEST MORTGAGE GROUP, INC.  
10260 SW GREENBURG ROAD, #900  
PORTLAND, OREGON 97223  
Loan Number: 01-71694

Clackamas County Official Records  
Sherry Hall, County Clerk  
2007-055116  
\$116.00  
01116894200700551160190195  
06/22/2007 02:54:14 PM  
M-TD Cnt=1 Stn=6 KARLYNWUN  
\$85.00 \$11.00 \$10.00

[Space Above This Line For Recording Date]

## DEED OF TRUST

MIN: 1000462-0000039429-6

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated JUNE 19, 2007, together with all Riders to this document.  
(B) "Borrower" is DOUGLAS A. JAMES AND EILEEN JAMES

Borrower is the trustor under this Security Instrument.

- (C) "Lender" is NORTHWEST MORTGAGE GROUP, INC.

Lender is a OREGON CORPORATION organized  
and existing under the laws of OREGON  
Lender's address is 10260 SW GREENBURG ROAD, #900, PORTLAND, OREGON  
97223

- (D) "Trustee" is FIDELITY NATIONAL TITLE COMPANY OF OREGON  
900 SW FIFTH AVENUE, PORTLAND, OREGON 97204

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

- (F) "Note" means the promissory note signed by Borrower and dated JUNE 19, 2007  
The Note states that Borrower owes Lender THREE HUNDRED FORTY-SIX THOUSAND FOUR  
HUNDRED THIRTY-EIGHT AND 00/100 Dollars (U.S. \$ 346,438.00) plus interest.

Borrower Initials: DAX Emg

OREGON--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
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Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 1, 2037

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- |   |   |
|---|---|
| <input type="checkbox"/> Adjustable Rate Rider        | <input type="checkbox"/> Planned Unit Development Rider |
| <input type="checkbox"/> Balloon Rider                | <input type="checkbox"/> Biweekly Payment Rider         |
| <input type="checkbox"/> 1-4 Family Rider             | <input type="checkbox"/> Second Home Rider              |
| <input checked="" type="checkbox"/> Condominium Rider | <input type="checkbox"/> Other(s) [specify]             |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

Borrower Initials: DAN EMG

OREGON-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
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## TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the  
COUNTY of CLACKAMAS :

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".  
A.P.N.: 05003167 31W23AD03700 003-027

which currently has the address of

30366 SW RUTH STREET #70

[Street]

WILSONVILLE  
[City]

, Oregon 97070  
[Zip Code]

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

### UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Borrower Initials: DAN Emg

OREGON--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
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Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA.

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Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater

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or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

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Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. **Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

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Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to

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Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to

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Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations

Borrower Initials: DAG EMG

OREGON-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
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EXHIBIT 1

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secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

Borrower Initials: DAG EMG

OREGON-Single Family Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
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**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall give notice of sale in the manner prescribed by Applicable Law to Borrower and to other persons prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. **Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Substitute Trustee.** Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. **Attorneys' Fees.** As used in this Security Instrument and in the Note, attorneys' fees shall include those awarded by an appellate court.

26. **Protective Advances.** This Security Instrument secures any advances Lender, at its discretion, may make under Section 9 of this Security Instrument to protect Lender's interest in the Property and rights under this Security Instrument.

27. **Required Evidence of Property Insurance.**

**WARNING**

Unless you provide us with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

Borrower Initials: DAX EMG

OREGON--Single Family--Rennie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS  
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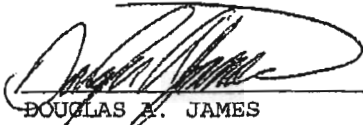
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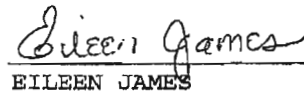


You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract or loan balance. If the cost is added to your contract or loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by Applicable Law.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

  
\_\_\_\_\_  
DOUGLAS E. JAMES (Seal)  
-Borrower

  
\_\_\_\_\_  
EILEEN JAMES (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

Witness:

Witness:

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[Space Below This Line For Acknowledgment]

State of Oregon

County of Multnomah

This instrument was acknowledged before me on 6-21-07

by DOUGLAS A. JAMES AND EILEEN JAMES



(Seal)

Cheryl Littlejohn  
Notary Public - State of Oregon

My commission expires: 9-26-08

**EXHIBIT "ONE"**

Unit 70, VILLAGE ESTATES CONDOMINIUM, Supplemental Plat No. 1: Annexation of Stage 2, in the City of Wilsonville, Clackamas County, Oregon, TOGETHER WITH with the limited common elements and the undivided interest in the general common elements appurtenant thereto, as set forth in Declaration Submitting Village Estates Condominium to Condominium Ownership recorded September 1, 2006, Recorder's No. 2006-081363 and Supplemental Declaration Submitting Stage 2, recorded October 31, 2006, Recorder's No. 2006-100981

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Loan Number: 01-71694

Date: JUNE 19, 2007

Property Address: 30366 SW RUTH STREET #70, WILSONVILLE, OREGON 97070

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

A.P.N. # : 05003167 31W23AD03700 003-027

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PAGE 16 OF 19

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Loan Number: 01-71694

## CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 19th day of JUNE, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to NORTHWEST MORTGAGE GROUP, INC., AN OREGON CORPORATION (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

30366 SW RUTH STREET #70, WILSONVILLE, OREGON 97070  
[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

VILLAGE ESTATES CONDOMINIUM OWNERS ASSOCIATION  
[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

**CONDOMINIUM COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. Condominium Obligations.** Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower Initials: DAY emg

MULTISTATE CONDOMINIUM RIDER  
Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
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PAGE 17 OF 19

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Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**F. Remedies.** If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

Borrower Initials: DAX Emg

MULTISTATE CONDOMINIUM RIDER  
Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
Form 3140 1/01 Page 2 of 3

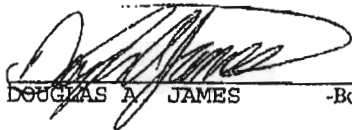
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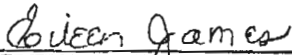
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EXHIBIT 1  
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Condominium Rider.

  
DOUGLAS A. JAMES (Seal)  
-Borrower

  
EILEEN JAMES (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

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EXHIBIT 1  
PAGE 19 OF 19

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AFTER RECORDING RETURN TO:

Foreclosure Department  
RECONTRUST COMPANY, N.A.  
1800 Tape Canyon Rd., CA6-914-01-94  
SIMI VALLEY, CA 93063  
TS No. 10 -0075247

Clackamas County Official Records  
Sherry Hall, County Clerk



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\$5.00 \$15.00 \$18.00 \$10.00

ASSIGNMENT OF DEED OF TRUST

For Valuable Consideration, the undersigned as Beneficiary, hereby grants, conveys, assigns, and transfers to BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP, C/O BAC HOME LOANS SERVICING, LP, 400 COUNTRYWIDE WAY SV-35, SIMI VALLEY, CA 93065, all beneficial interest under that certain Deed of Trust, dated 06/19/2007, executed by DOUGLAS A JAMES AND EILEEN JAMES, Grantor(s), to FIDELITY NATIONAL TITLE COMPANY OF OREGON, Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as Beneficiary, recorded on 06/22/2007 as Recorder's fee/file/instrument/microfilm/reception number 2007-055116, Records of Clackamas County, Oregon, describing land. There in: as more fully described in said Deed of Trust.  
Together with note or notes therein described or referred to, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated JUL 8 8 2010, 25

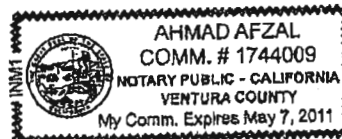
MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.

State of CALIFORNIA )  
County of VENTURA ) ss

By:   
Leticia Quintana Assistant Secretary

On JUL 8 8 2010, before me, AHMAD AFZAL, notary public, personally appeared Leticia Quintana, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.  
WITNESS my hand and official seal.

Notary Public in and for the State of CALIFORNIA  
Residing at VENTURA  
My Commission Expires: May 7, 2011  
Ahmad Afzal



\*Mortgage Electronic Registration Systems

EXHIBIT 2  
ORASGN (01/08)  
PAGE 1 OF 1

EXHIBIT 1  
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APPOINTMENT OF SUCCESSOR TRUSTEE

KNOW ALL MEN BY THESE PRESENTS, that Douglas A James And Eileen James, as grantor(s), and Fidelity National Title Company Of Oregon, as the Trustee, and Mortgage Electronic Registration Systems, Inc., is the Beneficiary under that certain Trust Deed dated 06/19/2007, and recorded 06/22/2007, as Recorder's fee/file/instrument/microfilm/reception No. 2007-055116 of the Mortgage Records of Clackamas County, Oregon. The undersigned who is the present Beneficiary under said Trust Deed desires to appoint a new trustee in the place and stead of the original trustee named above;

NOW THEREFORE, in view of the premises, the undersigned hereby appoints RECONTRUST COMPANY, N.A., whose address is 1800 Tapo Canyon Rd., CA6-914-01-94 SIMI VALLEY, CA 93063 as successor trustee under said Trust Deed, to have all the powers of said original trustee, effective immediately.

In construing this instrument, and whenever the context so requires, the singular includes the plural.

IN WITNESS WHEREOF, the undersigned Beneficiary has executed this document. If the undersigned is a corporation, it has caused its name to be signed and its seal affixed by an officer or other person duly authorized to do so by its board of directors.

DATED: JUL 08 2010, 2010.

BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP

By: [Signature]  
Name: Leticia Quintana  
Title: Assistant Secretary

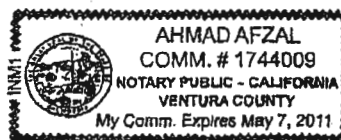
STATE OF CALIFORNIA )  
County of VENTURA ) ss.

On JUL 08 2010, before me, AHMAD AFZAL, personally appeared Leticia Quintana, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.  
\*\*Notary Public Assistant Secretary  
WITNESS my hand and official seal.

Notary Public for CALIFORNIA  
My commission expires: 11/12/11  
Ahmad Afzal

(SEAL)

APPOINTMENT OF SUCCESSOR TRUSTEE  
RE: Trust Deed from  
DOUGLAS A JAMES and EILEEN JAMES  
Grantor  
To  
RECONTRUST COMPANY, N.A.  
Trustee TS No. 10 -0075247



After recording return to:  
RECONTRUST COMPANY, N.A.  
C/O RECONTRUST COMPANY, N.A.  
400 COUNTRYWIDE WAY SV-35  
SIMI VALLEY, CA 93065

Clackamas County Official Records  
Sherry Hall, County Clerk  
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\*BAC HOME LOANS SERVICING LP  
FKA COUNTRYWIDE HOME LOANS  
SERVICING LP

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After recording return to:  
Attn: Foreclosure Department  
RECONTRUST COMPANY, N.A.  
400 COUNTRYWIDE WAY SV-35  
SIMI VALLEY, CA 93065

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Clackamas County Official Records  
Sherry Hall, County Clerk



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\$15.00 \$16.00 \$16.00 \$10.00

#### NOTICE OF DEFAULT AND ELECTION TO SELL

Reference is made to that certain Trust Deed made by DOUGLAS A JAMES AND EILEEN JAMES, as grantors, to FIDELITY NATIONAL TITLE COMPANY OF OREGON, as Trustee, in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as Beneficiary, dated 06/19/2007, recorded 06/22/2007, in the mortgage records of Clackamas County, Oregon, as Recorder's fee/file/instrument/microfilm/reception Number 2007-055116, covering the following described real property situated in said county and state, to wit:

SEE ATTACHED LEGAL DESCRIPTION

PROPERTY ADDRESS: 30366 SW RUTH STREET #70  
WILSONVILLE, OR 97070

There is default by the grantor or other person, or by their successor in interest, owing an obligation, the performance of which is secured by said Trust Deed, or by their successor in interest, with respect to provisions therein which authorize sale in the event of default of such provision. The default for which foreclosure is made is grantors' failure to pay when due the following sums: monthly payments of \$2,863.14 beginning 04/01/2010; plus late charges of \$115.24 each month beginning 04/01/2010 payment plus prior accrued late charges of \$-230.48; plus advances of \$0.00; together with title expense, costs, trustee's fees and attorney's fees incurred herein by reason of said default; and any further sums advanced by the Beneficiary for the protection of the above described real property and its interest therein.

By reason of said default, the Beneficiary has declared all sums owing on the obligation secured by said Trust Deed immediately due and payable, said sums being the following, to wit: \$336,479.26 with interest thereon at the rate of 7 percent per annum beginning 03/01/2010 plus late charges of \$115.24 each month beginning 04/01/2010 until paid; plus prior accrued late charges of \$-230.48; plus advances of \$0.00; together with title expense, costs, trustee's fees and attorney's fees incurred herein by reason of said default; and any further sums advanced by the Beneficiary for the protection of the above described real property and its interest therein.

#### NOTICE OF DEFAULT AND ELECTION TO SELL

RE: Trust Deed from  
DOUGLAS A JAMES and EILEEN JAMES,  
Grantor  
To  
RECONTRUST COMPANY, N.A.,  
Trustee TS No. 10 -0075247

#### For Additional Information:

Please Contact  
Foreclosure Department  
RECONTRUST COMPANY, N.A.  
RECONTRUST COMPANY, N.A.  
1800 Tapo Canyon Rd., CA6-914-01-94  
SIMI VALLEY, CA 93063  
(800)-281-8219

Notice is hereby given that the Beneficiary and Trustee, by reason of said default, have elected and do hereby elect to foreclose the Trust Deed by advertisement and sale pursuant to ORS 86.705 to 86.795, and to cause to be sold at public auction to the highest bidder for cash the interest in the described property which the grantor had, or had the power to convey, at the time the grantor executed the Trust Deed, together with any interest the grantor or grantor's successors in interest acquired after the execution of the Trust Deed, to satisfy the obligations secured by the Trust Deed and the expenses of the sale, including the compensations of the Trustee as provided by law, and reasonable fees of Trustee's attorneys.

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EXHIBIT 1  
PAGE 34

The sale will be held at the hour of 10:00 AM , in accordance with the standard of time established by ORS 187.110 on Friday, November 19, 2010, at the following place: in the courtyard located directly to the north of the main entrance of the Clackamas County Courthouse near the arbor, 807 Main St., Oregon City, Clackamas County, OR

, which is the hour, date and place last set for the sale.

Notice is further given that any person named in ORS 86.753 has the right, at any time prior to five days before the date last set for the sale, to have this foreclosure proceeding dismissed and the Trust Deed reinstated by payment to the Beneficiary of the entire amount then due (other than such portion of the principal as would not then be due had no default occurred) and by curing every other default complained of herein by tendering the performance required under the obligation or Trust Deed, in addition to paying said sums or tendering the performance necessary to cure the default, by paying all costs and expenses actually incurred in enforcing the obligation and Trust Deed, together with trustee's and attorney's fees not exceeding the amounts provided by ORS 86.753.

In constructing this notice, the singular includes the plural, the word "grantor" includes any successor in interest to the grantor as well as any other person owing an obligation, the performance of which is secured by said Trust Deed, and the words "Trustee" and "Beneficiary" include their respective successors in interest, if any.

RECONTRUST COMPANY, N.A.

*Daniel Rodriguez*  
DANIEL RODRIGUEZ Team Member

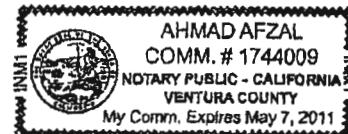
STATE OF CALIFORNIA  
COUNTY OF VENTURA ) ss.

On JUL 08 2010, before me, AHMAD AFZAL, notary public, personally appeared DANIEL B RODRIGUEZ *Team Member*, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. *Team Member*

WITNESS my hand and official seal.

Notary Public for CALIFORNIA  
My commission expires: MAY 7, 2011

(SEAL)



THIS IS AN ATTEMPT TO COLLECT A DEBT AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. HOWEVER IF YOU HAVE OR ARE IN THE PROCESS OF OBTAINING DISCHARGE OF THE DEBT FROM A BANKRUPTCY COURT, THIS DOCUMENT IS NOT AN ATTEMPT TO COLLECT A DEBT, BUT ONLY ENFORCEMENT OF LIEN RIGHTS AGAINST THE PROPERTY.

EXHIBIT 4  
PAGE 2 OF 2

EXHIBIT 1  
PAGE 35

LEGAL DESCRIPTION 10-0075247

**EXHIBIT "ONE"**

Unit 70, VILLAGE ESTATES CONDOMINIUM, Supplemental Plat No. 1: Annexation of Stage 2, in the City of Wilsonville, Clackamas County, Oregon, TOGETHER WITH with the limited common elements and the undivided interest in the general common elements appurtenant thereto, as set forth in Declaration Submitting Village Estates Condominium to Condominium Ownership recorded September 1, 2006, Recorder's No. 2006-081363 and Supplemental Declaration Submitting Stage 2, recorded October 31, 2006, Recorder's No. 2006-100981

(3)

EXHIBIT  
PAGE

EXHIBIT  
PAGE

1  
36

ORIGINAL

STATE OF OREGON  
CLACKAMAS COUNTY

11 FEB 14 PM 2:05 REC  
ENTERED

DOCKETED FEB 16 2011  
BY: KLB

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF CLACKAMAS COUNTY

DOUGLAS A. JAMES and EILEEN M.  
JAMES, Husband and Wife,

Plaintiff,

vs.

RECONTRUST COMPANY, an Unknown  
Entity Operating in the State of Oregon, BAC  
HOME LOAN SERVICING LIMITED  
PARTNERSHIP, a Texas Limited  
Partnership, MORTGAGE ELECTRONIC  
REGISTRATION SYSTEM, INC a  
Delaware Corporation, NORTHWEST  
MORTGAGE GROUP, INC. an Oregon  
Corporation.

Defendant.

Case No:

CV11020389

TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW CAUSE

\$10 card

TO: ALL Defendants

Plaintiff's motion for temporary restraining order and order to show cause why a  
preliminary injunction should not enter came before the court ex parte on February 14, 2011.

Based on the record, including the verified complaint and the declaration of the Plaintiff  
and Mr. Scannell along with the supporting Memorandum of law, the court finds:

1. If defendant is not immediately restrained from foreclosing on the real property  
located at 30366 SW Ruth St. Unit 70, Wilsonville, OR located in Clackamas County, Oregon,  
Plaintiffs will suffer irreparable injury, loss, or damage in the form of the loss of their primary

PAGE 1 - TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

TERRY SCANNELL  
Attorney at Law  
1818 SW Fifth Avenue, Suite 650  
Portland, Oregon 97204E

EXHIBIT

PAGE

37

1 residence and the loss of equity in the home.

2 2. This order should enter without actual notice because this foreclosure sale has  
3 been rescheduled multiple times and could be rescheduled prior to the new stated date of March  
4 17, 2011. In addition, the Court finds from the declaration of Mr. Scannell that a good faith  
5 effort has been made to inform all the parties to this case of his intent to seek this injunction.

6 **It is therefore ORDERED as follows:**

7  
8 1. Defendant RECONTRUST COMPANY, an Unknown Entity Operating in the  
9 State of Oregon, BAC HOME LOAN SERVICING LIMITED PARTNERSHIP, a Texas  
10 Limited Partnership, MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC., a  
11 Delaware Corporation, NORTHWEST MORTGAGE GROUP, INC. an Oregon Corporation  
12 and their officers, agents, servants, employees, and lawyers, and all other persons in active  
13 concert or participation with any of them who receive actual notice of this order, by personal  
14 service or otherwise, are directed not to conduct the sale of the real property located at 30366  
15 SW Ruth St. Unit 70, Wilsonville, OR.

16  
17 2. Defendant shall appear before this court on 22nd, 2011, at 1:00 p.m.  
18 Room TBD, Clackamas County Courthouse, and show cause, if any there be, why the  
19 activity described above should not continue to be restrained during the pendency of this action.

20 3. The order contained in paragraph 1 above shall expire at the date and time set  
21 forth in paragraph 2 above, unless extended by further order of this court.

22  
23  
24 //

25 //  
26

1  
2 4. This order shall be effective only until Wednesday, February 16, 2011 unless a posting by  
3 a qualified corporate surety of a bond, as described by ORCP 82 A(1)(a), in the sum of  
4 \$ 500. If the bond is not posted by the end of the business day on February 16, 2011, this  
5 Order shall be dissolved.  
6

7  
8 DATED this 14<sup>th</sup> day of February, 2011.  
9

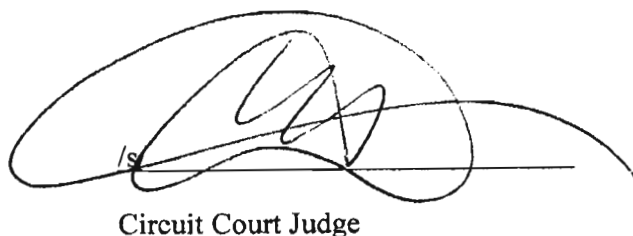
10  
11   
12 Circuit Court Judge

13 BOND APPROVED

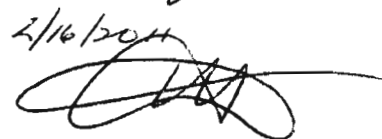
14 AND ORDER ISSUED:

15  
16 Date: 2/14/2011

17  
18 Time: 1:39 pm

19  
20  
21   
22 Circuit Court Judge

23 *Cash deposit of \$500 in lieu of*  
24 *Surety Bond allowed.*  
25  
26

*2/16/2011*  


1 Respectfully Submitted by:

2  
3  
4 Terry Scannell (OSB #853220)  
5 888 SW Fifth Avenue, Suite 650  
6 Portland, Oregon 97204  
7 Tel: (503) 776-0806, Fax: (503) 274-1214  
8 E-mail: terry@scannellLaw.com  
9 Of Attorneys for Plaintiffs  
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ORIGINAL

11 FEB 14 PM 2:10

ENTERED

DOCKETED  
FEB 18 2011

BY: KLB

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS COUNTY

**DOUGLAS A. JAMES and EILEEN M. JAMES**, Husband and Wife,

Plaintiff,

vs.

**RECONTRUST COMPANY**, an Unknown Entity Operating in the State of Oregon, **BAC HOME LOAN SERVICING LIMITED PARTNERSHIP**, a Texas Limited Partnership, **MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC** a Delaware Corporation, **NORTHWEST MORTGAGE GROUP, INC.** an Oregon Corporation.

Defendant.

Case No: CV11020309

**DECLARATION OF DOUGLAS A. JAMES**

I, Douglas A. James, under penalty of perjury, make the following declarations. I make these statements based on my personal knowledge.

- 1) My wife and I are the owners of the property that is the subject of this law suit. The property is located at 30366 SW Ruth St. Unit 70, Wilsonville, OR 97070 in Clackamas Country.
- 2) I have been led to believe that our house will be foreclosed on, on or about February 17, 2011 by public sale.
- 3) My wife and I both believe that there are serious flaws in the process being used to

PAGE 1 - DECLARATION OF DOUGLAS A. JAMES

TERRY SCANNELL  
Attorney at Law  
808 SW Fifth Avenue, Suite 650  
Portland, Oregon 97204E

EXHIBIT

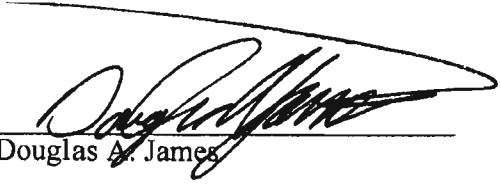
PAGE

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1 foreclose on our house. These flaws are contained in the Complaint that has been  
2 filed on our behalf with the Court.

- 3 4) Unless the sales is halted now we will suffer immediate and irreparable injury, loss  
4 or damage in the form of having our house sold before this matter can be fully tried to  
5 the Court.  
6

7  
8  
9 DATED this 11day of February, 2011.  
10

11  
12   
13 Douglas A. James  
14

15  
16 ///

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18 ///

19 ///

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22  
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26  
PAGE 2 - DECLARATION OF DOUGLAS A. JAMES

TERRY SCANNELL  
Attorney at Law  
888 SW Fifth Avenue, Suite 650  
Portland, Oregon 97204E

EXHIBIT 1  
PAGE 42

ORIGINAL

11 FEB 14 PM 2:10

ENTERED  
DOCKETED

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS COUNTY

ENTERED

FEB 1 8 2011

DOUGLAS A. JAMES and EILEEN M.  
JAMES, Husband and Wife,

Plaintiff,

vs.

RECONTRUST COMPANY, an Unknown  
Entity Operating in the State of Oregon, BAC  
HOME LOAN SERVICING LIMITED  
PARTNERSHIP, a Texas Limited  
Partnership, MORTGAGE ELECTRONIC  
REGISTRATION SYSTEM, INC a  
Delaware Corporation, NORTHWEST  
MORTGAGE GROUP, INC. an Oregon  
Corporation.

Defendant.

BY: KLB

Case No: CV11020309

DECLARATION OF TERRY SCANNELL

I, Terry Scannell, under penalty of perjury, make the following declarations. I make these  
statements based on my personal knowledge.

- 1) I am the attorney for the Plaintiffs in this case.
- 2) On February 12 and 14, 2011 I made an effort to inform the parties to this action of  
my intent to appear here to seek this injunction.
- 3) I first called BAC who is the loan servicer. I spoke to Ms. Jami Henson who is a  
manager of the unit. I gave her the loan file information and told her of my intent to  
seek the injunction. I gave her detailed information about the time and place of the ex

PAGE 1 - DECLARATION OF DOUGLAS A. JAMES

TERRY SCANNELL  
Attorney at Law  
888 SW Fifth Avenue, Suite 650  
Portland, Oregon 97204E

EXHIBIT

PAGE

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3 parte hearing. I asked her if she had an attorney I could talk to and she said, "no."

4 4) Next I talked to Rafael Almendarez who is a manager with Recon Trust. I was told  
5 that the sale had been delayed until March 17, 2011. I also told him about my intent  
6 to seek this injunction. He told me when asked that he did not have an attorney for  
7 me to contact.  
8

9 5) I also talked to Jim Smith who is a partner in Northwest Mortgage Group who was  
10 the loan originator. He also took the information and told me that his firm is  
11 represented by Chris Ambrose. I then tried to contact Mr. Chris Ambrose. I was not  
12 able to reach him, but left a voice message.

13 6) I also called Paula Ryan-Apuzzo with the Litigation Group at Bank America Home  
14 Loans. It is my understanding that it is this group that coordinates all litigation  
15 involving their loans. I left a message for Ms. Ryan with the key information about  
16 this matter.  
17

18 7) I also called MERS and spoke to Joe Patry, (703) 738-0208, who told me he was an  
19 in-house counsel for MERS. I gave him the information about this matter and asked  
20 him if he had any questions at this point and he said he did not.  
21

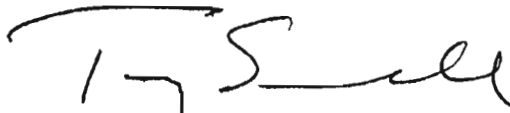
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4 8) I believe that the following represents a good faith effort to inform the parties of my  
5 intent to take this action on behalf of my clients.  
6  
7  
8  
9

10 DATED this 14<sup>th</sup> day of February, 2011.  
11

12   
13  
14 Terry Scannell

15 ///

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STATE OF OREGON  
CLACKAMAS COUNTY  
**ORIGINAL**  
FEB 14 PM 2:10

ENTERED \_\_\_\_\_  
DOCKETED \_\_\_\_\_

**ENTERED**  
**FEB 18 2011**  
**BY: KLB**

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF CLACKAMAS COUNTY

6 **DOUGLAS A. JAMES and EILEEN M.**  
7 **JAMES, Husband and Wife,**

8 Plaintiff,

9 vs.

10 **RECONTRUST COMPANY, an Unknown**  
11 **Entity Operating in the State of Oregon, BAC**  
12 **HOME LOAN SERVICING LIMITED**  
13 **PARTNERSHIP, a Texas Limited**  
14 **Partnership, MORTGAGE ELECTRONIC**  
15 **REGISTRATION SYSTEM, INC a**  
16 **Delaware Corporation, NORTHWEST**  
17 **MORTGAGE GROUP, INC. an Oregon**  
18 **Corporation.**

19 Defendant.

Case No: *CV 1102*

**MEMORANDUM OF LAW IN SUPPORT  
OF PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW**

20  
21  
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26  
**I. FACTS**

27 This Motion for a Temporary Restraining Order and Motion to Show Cause comes before  
28 the Court to prevent the foreclosure on the Plaintiffs' primary residence located att 30366 SW  
29 Ruth St. Unit 70, Wilsonville, OR. The Plaintiffs are Husband and Wife and reside in  
30 Clackamas County, Oregon. The Plaintiffs seek the TRO and Preliminary Injunction to preserve  
31 the status quo during the pendency of this litigation.

32 At this time the Plaintiffs understand that the Defendants or one of them (most likely  
33 Recon Trust Company) will sell their home at public auction on February 17, 2011. The facts of

1 the situation, to the extent that they are known by the Plaintiffs are set forth in the Complaint that  
2 was filed this morning with this Court. The allegations from the Complaint are incorporated by  
3 reference herein as if set forth in full. The facts as they are known to the Plaintiffs, therefore will  
4 not be fully restated here for the Court.

5 The following is meant to suffice as a short summary. The Plaintiffs took out a home  
6 loan in June of 2007 to buy their condominium. The Deed of Trust named Defendant Mortgage  
7 Electronic Registration System ("MERS") as the beneficiary of the trust deed and "nominee" of  
8 the lenders. In April of 2010 they fell behind on their payments. As a result MERS and others  
9 assigned the Deed of Trust for the purpose of foreclosing on the property. The Plaintiffs allege  
10 and have a good faith basis to believe that these assignments are void for a variety of reasons  
11 which are set forth in the Complaint with specificity. In addition, several cases in Oregon have  
12 found that MERS is in fact not the "Beneficiary" of trust deeds but rather is more of a "straw  
13 man" having no real economic interest in the transactions and therefore has no right or authority  
14 to cause this property to be foreclosed on. The Plaintiffs seek to preserve the status quo during  
15 the pendency of this litigation so that they may ascertain if the parties which seek to take their  
16 home away from them in fact have the legal authority and legal standing to do so.

## 19 II. LEGAL ANALYSIS AND ARGUMENT

20 "[t]he office of a preliminary injunction is to preserve the status quo so that, upon the final  
21 hearing, full relief may be granted." *State ex rel. v. Mart*, 135 Or. 603, 613, 295 P. 459 (1931);  
22 *see also State ex rel. McKinley Automotive v. Oldham*, 283 Or. 511, 515 n. 3, 584 P.2d 741  
23 (1978) (describing function of preliminary injunction as protection of status quo). This is a  
24 situation where the Plaintiffs seek to maintain the status quo.  
25  
26

1 While the Plaintiffs do not believe they must meet their burden of proof in the case at this  
2 time, there is nonetheless a growing body of case law in Oregon Federal Courts which support  
3 the Plaintiffs' legal position. In *McCoy v BNC Mortgage, Inc* Bankruptcy Case No. 10-63814-  
4 fra13 (Bankruptcy D. Or 2011) the plaintiff filed an action for wrongful foreclosure and quiet  
5 title. The defendants including MERS filed a motion to dismiss as to both claims. Chief  
6 Bankruptcy Judge Alley granted the defendants motion as to quiet title with leave to replead but  
7 refused to dismiss the wrongful foreclosure claim. The *McCoy* court found that there was  
8 evidence that MERS had not recorded all assignments of the trust deed as required under ORS  
9 86.735 and that it could not be the "beneficiary" under the trust deed as it was not the "person  
10 for whose benefit a trust deed is given.." pursuant to ORC 86.705.(1).

12 In *Allman v CIT Group*, WL 2010 3366405 (Bankruptcy D. Or) the court came to a  
13 similar conclusion as to the status of MERS. *Allman* involved the issue of what priority to give  
14 various creditors all claiming rights in the same collateral. Judge Perris was confronted with the  
15 issue of whether or not the failure to give MERS notice of the release of the trust deed would  
16 give one creditor a more favorable position than another. *Id* at 7. In this instance Judge Perris  
17 also found that MERS could not be the "beneficiary" of the trust deed. Judge Perris wrote as  
18 follows,  
19

20 It is apparent that the listing of MERS as the beneficiary in the deed of trust is  
21 merely to facilitate its ownership tracking functions. **It is not in any real sense**  
22 **of the word, particularly as defined in ORS 86.705(1), the beneficiary of the**  
23 **trust deed.** (Emphasis added)  
24  
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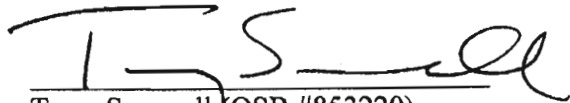


1 Finally at the trial court level, Judge Ana Brown granted a TRO on Friday, February 11,  
2 2011 to a homeowner who also has MERS on its title, *Ekerson v. Mortgage Electronic*  
3 *Registration System*, US District Court Case No. 11-CV-178-HU (D. Or 2011). Judge Brown  
4 also in part rested her decision to allow the TRO on the basis that MERS was not a "beneficiary"  
5 under Oregon law.

### 6 III. CONCLUSION

7  
8 There is now a growing body of law that the assembly line foreclosures which have been  
9 taking place need to be slowed at least long enough to determine if the parties that seek to  
10 displace people from their homes actually have the legal authority to do so. In this instance, the  
11 harm that will befall the Plaintiffs is irreparable, money damages cannot substitute for their  
12 interests in the unique real property that is at issue in the case and the temporary injunction  
13 sought will not excessively harm the Defendants. Pursuant to ORCP 79 this temporary  
14 injunction should be granted.

15  
16 DATED this 14<sup>th</sup> day of February, 20100

17  
18   
19 Terry Scannell (OSB #853220)  
20 888 SW Fifth Avenue, Suite 650  
21 Portland, Oregon 97204  
22 Tel: (503) 776-0806, Fax: (503) 274-1214  
23 E-mail: terry@scannellLaw.com  
24 Of Attorneys for Plaintiffs  
25  
26

STATE OF OREGON  
**ORIGINAL**

11 FEB 14 PM 2:10

ENTERED \_\_\_\_\_  
DOCKETED \_\_\_\_\_

**ENTERED**  
FEB 14 2011  
BY: KLB

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS COUNTY

**DOUGLAS A. JAMES and EILEEN M. JAMES**, Husband and Wife,

Plaintiff,

vs.

**RECONTRUST COMPANY**, an Unknown Entity Operating in the State of Oregon, **BAC HOME LOAN SERVICING LIMITED PARTNERSHIP**, a Texas Limited Partnership, **MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC** a Delaware Corporation, **NORTHWEST MORTGAGE GROUP, INC.** an Oregon Corporation.

Defendant.

Case No:

**CV11020389**

**PLAINTIFFS' MOTION FOR TEMPORARY RETRAINING ORDER AND ORDER TO SHOW CAUSE**

1.

Plaintiffs move the Court for an order temporarily restraining defendants from foreclosing on the Plaintiffs' real property located at 30366 SW Ruth St. Unit 70, Wilsonville, OR 97070 in Clackamas County, on the ground that the Defendants or one of them is about to foreclose on the property. The foreclosure on the property which was last scheduled for February 17, 2011 will cause immediate and irreparable injury to plaintiff in the form of the loss of their home and the equity in the home.

//

//

2.

Plaintiff further moves the court for its order requiring defendant to show cause, if any there be, why the order requested above should not continue and remain in effect during the pendency of this action.

3.

In support of this motion, plaintiff relies on the verified complaint and the declaration of Douglas A. James and the declaration of trial counsel, Terry Scannel, ORCP 79, and the following memorandum.

DATED this 14<sup>th</sup> day of February, 2011



Terry Scannel (OSB #853220)  
888 SW Fifth Avenue, Suite 650  
Portland, Oregon 97204  
Tel: (503) 776-0806, Fax: (503) 274-1214  
E-mail: terry@scannelLaw.com  
Of Attorneys for Plaintiffs

///

///

///

PAGE 2 - MOTION FOR TRO AND PRELIMINARY INJUNCTION

TERRY SCANNEL  
Attorney at Law  
888 SW Fifth Avenue, Suite 650  
Portland, Oregon 97204E

EXHIBIT

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF CLACKAMAS

6 **DOUGLAS A. JAMES and EILEEN M.**  
7 **JAMES, Husband and Wife,**

8 Plaintiffs,

9 vs.

10 **RECONTRUST COMPANY, an Unknown**  
11 **Entity Operating in the State of Oregon, BAC**  
12 **HOME LOAN SERVICING LIMITED**  
13 **PARTNERSHIP, a Texas Limited**  
14 **Partnership, MORTGAGE ELECTRONIC**  
15 **REGISTRATION SYSTEM, INC a**  
16 **Delaware Corporation, NORTHWEST**  
17 **MORTGAGE GROUP, INC. an Oregon**  
18 **Corporation,**

19 Defendants.

) Case No. CV11020389

) CERTAIN DEFENDANTS' RESPONSE TO  
) SHOW CAUSE ORDER

) AMOUNT CLAIMED: \$10,001

) (ORAL ARGUMENT REQUESTED)

20 Defendants ReconTrust, N.A., BAC Home Loan Servicing, LP, and Mortgage Electronic  
21 Registration System, Inc. ("defendants"), by and through their attorneys, Pilar C. French of Lane  
22 Powell, PC, hereby respond to the Court's Order dated February 14, 2011, which directed  
23 defendants to show cause why they should not be restrained from conducting a sale of real  
24 property securing a loan to plaintiffs Douglas and Eileen James. As explained below, judicial  
25 intervention is not needed because the sale of the property has been canceled, and plaintiffs do  
26 no face imminent threat of harm.

23 **BACKGROUND**

24 On February 14, 2011, plaintiffs filed a Complaint alleging wrongful foreclosure with  
25 respect to property securing a loan they obtained in June 2007. Plaintiffs admit that they have  
26 been in default in their payment obligations since April 2010. (Complaint ¶ 13.)

PAGE 1 - CERTAIN DEFENDANTS' RESPONSE TO SHOW CAUSE ORDER

1 The same day, plaintiffs filed a motion for temporary restraining order with respect to the  
2 foreclosure sale, which plaintiffs stated was scheduled for February 17, 2011. On February 14,  
3 2011, the Court granted the motion, directed defendants not to conduct the sale, and set a show  
4 cause hearing for February 22, 2011, as to why they should not continue to be restrained during  
5 the pendency of the action.

6 Defendants have conferred in response to the Court's February 14, 2011, order. To  
7 conserve their resources and the resources of the Court, they have canceled the foreclosure sale  
8 which was the subject of plaintiffs' motion. (See Declaration of Leticia Quintana in Support of  
9 Certain Defendants' Response to Show Cause Order filed concurrently herewith.)

#### 10 DISCUSSION

11 This Court may issue an injunction only when the party sought to be enjoined is  
12 "threaten[ing] or about to do" something that will cause the moving party irreparable loss.  
13 ORCP 79 A(1). See also ORCP 79 B(1)(a) (temporary restraining orders may only be issued to  
14 prevent "immediate and irreparable loss"). Here, the harm plaintiffs sought to restrain was  
15 potential loss of their property as a result of a foreclosure sale, but defendants have voluntarily  
16 canceled the sale.

17 As a result, plaintiffs now face no threat of immediate harm. Plaintiffs' request for  
18 injunctive relief is moot, and there is no need for judicial intervention, as other courts have  
19 concluded in the same circumstances. See, e.g., *Italiano v. Concord Mortgage Co.*, 2010 WL  
20 1531054, at \*1 (D. Ariz. Apr. 8, 2010) (denying TRO when defendants had agreed to postpone  
21 sale because "the alleged harm appear[ed] relatively speculative in nature"); *Johnson v. Taylor*  
22 *Bean Whitaker Mortgage Corp.*, 2010 WL 4038603, at \*1 (D.S.C. Oct. 1, 2010) (denying TRO  
23 based on foreclosing party's offer to postpone foreclosure sale); *Cervantes v. Countrywide Home*  
24 *Loans, Inc.*, 2009 WL 1636169, at \*2 (D. Ariz. June 10, 2009); *Muhammad v. HSBC Bank USA,*  
25 *N.A.*, 2009 WL 256275, at \*1 (S.D. Ala. Feb. 3, 2009).

1 The Court should accordingly cancel the show cause hearing scheduled for February 22,  
2 2011.

3 **CONCLUSION**

4 For the foregoing reasons, defendants ReconTrust, N.A., BAC Home Loan Servicing, LP,  
5 and Mortgage Electronic Registration System, Inc. respectfully submit that no need for judicial  
6 intervention exists to restrain defendants with respect to the foreclosure sale of plaintiffs'  
7 property because the sale was canceled.<sup>1</sup>

8 DATED: February 18, 2011

9 LANE POWELL PC

10   
11 By \_\_\_\_\_

12 Pilar C. French, OSB No. 962880  
13 docketing-pdx@lanepowell.com  
14 Attorneys for Defendants ReconTrust Company;  
15 BAC Home Loan Servicing; and Mortgage  
16 Electronic Registration System  
17  
18  
19  
20  
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23


24 \_\_\_\_\_  
25 <sup>1</sup> In canceling the foreclosure sale, defendants do not agree that plaintiffs' Complaint or Motion  
26 for Temporary Restraining Order have any merit, and expressly deny the allegations made by  
plaintiffs.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on February 18, 2011, I caused to be served a copy of the foregoing  
3 CERTAIN DEFENDANTS' RESPONSE TO SHOW CAUSE ORDER on the following  
4 person(s) in the manner indicated below at the following address(es):

5 Terry Scannell, Esq.  
6 888 SW Fifth Avenue, Suite 650  
7 Portland, OR 97204  
8 Facsimile: (503) 274-1214  
9 E-Mail: terry@scannellaw.com

10 ☐ by CM/ECF  
11 ☐ by Electronic Mail  
12 ☒ by Facsimile Transmission  
13 ☒ by First Class Mail  
14 ☐ by Hand Delivery  
15 ☐ by Overnight Delivery

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Pilar C. French

CERTIFICATE OF SERVICE

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF CLACKAMAS

6 **DOUGLAS A. JAMES and EILEEN M.**  
7 **JAMES, Husband and Wife,**

8 Plaintiffs,

9 vs.

10 **RECONTRUST COMPANY, an Unknown**  
11 **Entity Operating in the State of Oregon, BAC**  
12 **HOME LOAN SERVICING LIMITED**  
13 **PARTNERSHIP, a Texas Limited**  
14 **Partnership, MORTGAGE ELECTRONIC**  
15 **REGISTRATION SYSTEM, INC a**  
16 **Delaware Corporation, NORTHWEST**  
17 **MORTGAGE GROUP, INC. an Oregon**  
18 **Corporation,**

19 Defendants.

Case No. CV11020389

DECLARATION OF PILAR C. FRENCH IN  
SUPPORT OF CERTAIN DEFENDANTS'  
RESPONSE TO SHOW CAUSE ORDER

20 I, Pilar C. French, declare as follows:

21 1. I am an attorney at Lane Powell PC and one of the attorneys for defendants  
22 ReconTrust Company, BAC Home Loan Servicing Limited Partnership, and Mortgage  
23 Electronic Registration System, Inc. I make this declaration based on my own personal  
24 knowledge and if called as a witness, I could and would competently testify to the facts stated  
25 herein.

26 2. Attached hereto as Exhibit 1 is a copy of the Declaration of Leticia Quintana in  
Support of Certain Defendants' Response to Show Cause Order. Ms. Quintana has provided me  
with a scanned copy of her signed declaration and has informed me that she will provide the  
original to me for filing with the Court. The original declaration will be filed separately once it  
is received.

PAGE 1 - DECLARATION OF PILAR C. FRENCH IN SUPPORT OF CERTAIN  
DEFENDANTS' RESPONSE TO SHOW CAUSE ORDER



1 I hereby declare that the above statement is true to the best of my knowledge and belief,  
2 and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

3 DATED: February 18, 2011

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6 Pilar C. French  
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PAGE 2 - DECLARATION OF PILAR C. FRENCH IN SUPPORT OF CERTAIN  
DEFENDANTS' RESPONSE TO SHOW CAUSE ORDER

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF CLACKAMAS

6 **DOUGLAS A. JAMES and EILEEN M.**  
7 **JAMES, Husband and Wife,**

8 Plaintiffs,

9 vs.

10 **RECONTRUST COMPANY, an Unknown**  
11 **Entity Operating in the State of Oregon, BAC**  
12 **HOME LOAN SERVICING LIMITED**  
13 **PARTNERSHIP, a Texas Limited**  
14 **Partnership, MORTGAGE ELECTRONIC**  
15 **REGISTRATION SYSTEM, INC a**  
16 **Delaware Corporation, NORTHWEST**  
17 **MORTGAGE GROUP, INC. an Oregon**  
18 **Corporation,**

19 Defendants.

Case No. CV11020389

DECLARATION OF LETICIA QUINTANA  
IN SUPPORT OF CERTAIN  
DEFENDANTS' RESPONSE TO SHOW  
CAUSE ORDER

20 I, Leticia Quintana, declare as follows:

21 1. I am employed in the Trustee Services department of ReconTrust Company, N.A.  
22 ("ReconTrust"), which has been incorrectly named in the caption. I make this declaration based  
23 on my own personal knowledge and if called as a witness, I could and would competently testify  
24 to the facts stated herein.

25 2. ReconTrust is serving as the successor trustee for the trust deed and non-judicial  
26 foreclosure sale at issue in this case. On February 17, 2011, ReconTrust was instructed to cancel  
the non-judicial foreclosure sale, which is currently scheduled for March 9, 2011.

3. A Notice of Rescission for the sale is being prepared and will be recorded in the  
County Recorder's Office for Clackamas County but, due to the holiday weekend, probably will

PAGE 1 - DECLARATION OF LETICIA QUINTANA IN SUPPORT OF MOTION TO  
VACATE SHOW CAUSE ORDER

1 not be recorded by the time this Court holds the order to show cause hearing scheduled for  
2 February 22, 2011.

3

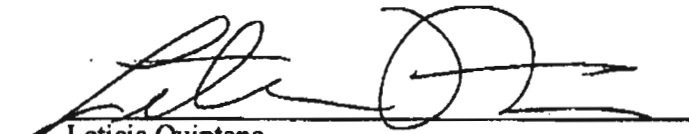
4 I hereby declare that the above statement is true to the best of my knowledge and belief,  
5 and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

6 Executed on February 18, 2011, in Simi Valley, California.

7

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Leticia Quintana

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PAGE 2 - DECLARATION OF LETICIA QUINTANA IN SUPPORT OF MOTION TO  
VACATE SHOW CAUSE ORDER

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on February 18, 2011, I caused to be served a copy of the foregoing  
3 DECLARATION OF PILAR C. FRENCH IN SUPPORT OF CERTAIN DEFENDANTS'  
4 RESPONSE TO SHOW CAUSE ORDER on the following person(s) in the manner indicated  
5 below at the following address(es):

6 Terry Scannell, Esq.  
7 888 SW Fifth Avenue, Suite 650  
8 Portland, OR 97204  
9 Facsimile: (503) 274-1214  
E-Mail: terry@scannellaw.com

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15 Pilar C. French  
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CERTIFICATE OF SERVICE

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3 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
4 FOR THE COUNTY OF CLACKAMAS COUNTY  
5

6 **DOUGLAS A. JAMES and EILEEN M.**  
7 **JAMES, Husband and Wife,**

8 Plaintiffs,

9 vs.

10 **RECONTRUST COMPANY, an Unknown**  
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17 **MORTGAGE GROUP, INC. an Oregon**  
18 **Corporation.**

19 Defendants.

)  
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) Case No: CV11020389  
)

) **PLAINTIFFS' REPLY TO SUPPORT**  
) **MOTION FOR PRELIMINARY**  
) **INJUNCTION**

20  
21  
22 **I. LEGAL ANALYSIS AND ARGUMENT**  
23  
24  
25  
26

27 **A) The Defendants' Response Lacks Substance**

28 The Defendants in this case are attempting to turn what is a legal rout into a tactical  
29 retreat. They are attempting to do this by telling the Court that they will soon -- but not yet --  
30 remove the threat of foreclosure of the Plaintiffs' property. The Defendants, using one  
31 declaration, state that they will soon remove the foreclosure threat against the Plaintiffs and that

1 in essence all is well for the Plaintiffs and they need to take no additional action.

2 But, what the Defendants have refused to do is provide a written representation to the  
3 Plaintiffs or a representation to this Court that the Defendants or one of them will not start or re-  
4 start the foreclosure process tomorrow or the next day. This is despite being invited to do so  
5 several times. *Scannell Declaration* attached to this Reply. In the absence of such a  
6 representation there is a very real threat of irreparable harm to the Plaintiffs which needs to be  
7 enjoined.  
8

9  
10 The Defendants have not contested any of the specific factual or legal arguments in  
11 Plaintiffs moving papers. The facts presented by the Plaintiffs are largely documents from the  
12 property records of this county. The law cited by the Plaintiffs is all from federal courts sitting  
13 in Oregon applying Oregon law.  
14

15 In an effort to make some record, the Defendants have placed a single footnote on the last  
16 page of their Reply. The footnote in essence states that nothing should be read into the  
17 Defendants' cancellation of the foreclosure sale and that the Plaintiffs positions do not have "any  
18 merit." Typically when the other side's arguments lack "any merit" lawyers file responses filled  
19 with legal authority and make arguments. Not in this situation.  
20

21 To support their legal position the Defendants have cited four cases. None of these cases  
22 are reported cases but can only be found on Westlaw. Each case cited is outside of Oregon, are  
23 federal cases and appear to be interpreting FRCP 65 and not ORCP 79. At the outset it must be  
24 stated that all these cases are suspect. In *Sims Snowboards, Inc. v. Kelly*, 863 F.2d 643, 646-47  
25  
26

PAGE 2 - PLAINTIFFS' REPLY TO SUPPORT MOTION FOR PRELIMINARY INJUNCTION

1 (9th Cir.1988) (holding that Federal Rule of Civil Procedure 65 addresses only the procedural  
2 aspects of injunctive relief, while state law controls whether injunctive relief is appropriate). *IRIS*  
3 *Mgmt. Group, LLC v. Malan*, 329 F. App'x. 112, 113 (9th Cir. 2009).

4 All the cases cited by the Defendants are federal cases which apply substantive law  
5 outside of Oregon. More importantly, the statutory standard for obtaining a Preliminary  
6 Injunction is different under FRCP than under the ORCP. This can be surmised by the fact that  
7 the wording of the two statutes is very different. The two standards should not be confused or  
8 blurred together. And, one case cited by the Defendants, *Johnson v Taylor Bean Whittaker*  
9 *Mortgage Corp.* 2010 WL 4038603 (D.S.C. Oct 1, 2010) does not contain any facts about the  
10 cancellation of a foreclosure sale. For these reason, the cases cited by the Defendants are of  
11 limited or non-existent persuasive authority. The Plaintiffs suggest to the Court that it view the  
12 situation before it for what it is, a case of first impression in Oregon.  
13  
14

15 B. Analysis Under Oregon Law  
16

17 The granting or denial of a preliminary injunction is within the sound discretion of the  
18 trial court. *Anderson v Harju* 113 Or 552, 233 P 848 (1925) The relevant portion of the ORCP  
19 79 read as follows:  
20

21 A(1) **Circumstances.** Subject to the requirements of Rule 82 A(1), a temporary  
22 restraining order or preliminary injunction may be allowed under this rule:  
23 A(1)(a) When it appears that a party is entitled to relief demanded in a pleading, and such  
24 relief, or any part thereof, consists of restraining the commission or continuance of some  
25 act, the commission or continuance of which during the litigation would produce injury  
26 to the party seeking the relief; or

25 A(1)(b) When it appears that the party against whom a judgment is sought is doing or  
26 threatens, or is about to do, or is procuring or suffering to be done, some act in violation  
of the rights of a party seeking judgment concerning the subject matter of the action, and

tending to render the judgment ineffectual. This paragraph shall not apply when the provisions of Rule 83 E, F(4) and H(2) are applicable, whether or not provisional relief is ordered under those provisions. (Emphasis added) ORCP 79 Or. R. Civ. P. 79

The Plaintiffs submit that by the Defendants refusing to state that they will not reinstate or restart the foreclosure process during the pendency of the lawsuit that they are engaged in is *threat* to the Plaintiffs. The Plaintiffs are attempting to *enjoin that continued threat* which exists to the property. Declaration of Douglas A. James. This type of threat falls within the wording of the Oregon statute and can and should be enjoined. FRCP 65 does not contain the language which is contained in ORCP 79.<sup>1</sup>

The cases cited by the Defendants seem to suggest that if there is no immediate threat of foreclosure the Plaintiffs are not subject to "irreparable harm/injury." But this interpretation of

<sup>1</sup> **(a) Preliminary Injunction.**

**(1) Notice.** The court may issue a preliminary injunction only on notice to the adverse party.

**(2) Consolidating the Hearing with the Trial on the Merits.** Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

**(b) Temporary Restraining Order.**

**(1) Issuing Without Notice.** The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

**(A)** specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

**(B)** the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

**(2) Contents; Expiration.** Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry--not to exceed 14 days--that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

**(3) Expediting the Preliminary-Injunction Hearing.** If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order. Fed. R. Civ. P. 65

PAGE 4 - PLAINTIFFS' REPLY TO SUPPORT MOTION FOR PRELIMINARY INJUNCTION



1 the law misses the point. *Black's Law Dictionary* 924-25 (4th ed. 1968), defines "irreparable  
2 injury" as follows:

3 "This phrase does not mean such an injury as is beyond the possibility of repair.  
4 or beyond possible compensation in damages, or necessarily great damage, but  
5 includes an injury, whether great or small, which ought not to be submitted to, on  
6 the one hand, or inflicted, on the other; and which, because it is so large or so  
7 small, or is of such constant and frequent occurrence, or because no certain  
8 pecuniary standard exists for the measurement of damages, cannot receive  
9 reasonable redress in a court of law."

10 In this case the continued threat of foreclosure is a constant and frequent threat not only to the  
11 property but to the Plaintiffs' peace of mind.

12 As discussed in the Plaintiffs' moving papers, the standard for granting a preliminary  
13 injunction in Oregon focuses on the preservation of the status quo. "[t]he office of a  
14 preliminary injunction is to preserve the status quo so that, upon the final hearing, full relief may  
15 be granted." *State ex rel. v. Mart*, 135 Or. 603, 613, 295 P. 459 (1931); *see also State ex rel.*  
16 *McKinley Automotive v. Oldham*, 283 Or. 511, 515 n. 3, 584 P.2d 741 (1978) (describing  
17 function of preliminary injunction as protection of status quo).

## 18 II. CONCLUSION

19 The Defendants' Response lacks substance, confuses the standard for granting a  
20 preliminary injunction between Oregon and federal law, fails to make substantive legal  
21 arguments in opposition to the Plaintiffs' filings and cites cases that are not relevant to this legal  
22 situation. The Oregon standard for injunctive relief is that it preserves the status quo. There are  
23 only two ways to preserve the status quo during the pendency of this case which is the Oregon  
24 standard. The first is for the Defendants to represent in writing or in open Court that the  
25 foreclosure will not be restarted or reinstated during the case. The second is for this Court to  
26

1 enjoin it from occurring.

2  
3  
4 DATED this 22<sup>nd</sup> day of February, 2011.  
5  
6

7  
8 Terry Scannell (OSB #853220)  
888 SW Fifth Avenue, Suite 650  
9 Portland, Oregon 97204  
10 Tel: (503) 776-0806, Fax: (503) 274-1214  
11 E-mail: terry@scannellLaw.com  
12 Of Attorneys for Defendants  
13

14 ///

15 ///

16 ///

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF CLACKAMAS COUNTY

6 **DOUGLAS A. JAMES and EILEEN M.** )  
7 **JAMES, Husband and Wife,** )

8 Plaintiff, )

9 vs. )

10 **RECONTRUST COMPANY**, an Unknown )  
11 Entity Operating in the State of Oregon, **BAC** )  
12 **HOME LOAN SERVICING LIMITED** )  
13 **PARTNERSHIP**, a Texas Limited )  
14 Partnership, **MORTGAGE ELECTRONIC** )  
15 **REGISTRATION SYSTEM, INC** a )  
16 Delaware Corporation, **NORTHWEST** )  
17 **MORTGAGE GROUP, INC.** an Oregon )  
18 Corporation. )

19 Defendant.

Case No: CV11020389

**DECLARATION OF DOUGLAS A. JAMES**

20  
21 I, Douglas A. James, under penalty of perjury, make the following declarations. I make  
22 these statements based on my personal knowledge.

- 23 1) My wife and I are the owners of the property that is the subject of this law suit. The  
24 property is located at 30366 SW Ruth St. Unit 70, Wilsonville, OR 97070 in  
25 Clackamas Country.  
26 2) Since this matter arose my wife and I have been under the constant threat that our  
house would be foreclosed on. The foreclosure sale has been reset numerous times  
by the Defendants without providing notice to us as they are required to do under

ORS Chapter 86. In order to ascertain when the house might be subject to foreclosure I have had to constantly call ReconTrust Company to learn when they had scheduled a sale. On one occasion I went to this court house expecting the house to be sold only to find out that the sale had been cancelled.

3) In addition, I have joint custody of my daughter and we maintain a room in the house for her.

4) This has been disruptive to our live and has put a constant strain on us. This threat is ongoing and real so long as the Defendants refuse to tell us that the house will not be foreclosed on during this law suit or until the Court acts to enjoin them from foreclosing on us.

5) I continue to believe that there are serious flaws in the process that is being used to foreclose on the property. Since we filed this law suit I have seen nothing to dissuade me of that.

DATED this 22<sup>nd</sup> day of February, 2011.

---

Douglas A. James

///

1  
2  
3  
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF CLACKAMAS COUNTY

6 **DOUGLAS A. JAMES and EILEEN M.**  
7 **JAMES, Husband and Wife,**

8 Plaintiff,

9 vs.

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15 **REGISTRATION SYSTEM, INC a**  
16 **Delaware Corporation, NORTHWEST**  
17 **MORTGAGE GROUP, INC. an Oregon**  
18 **Corporation.**

19 Defendant.

)  
)  
)  
) Case No: CV11020389

) **DECLARATION OF TERRY SCANNELL**

20  
21 I, Terry Scannell, under penalty of perjury, make the following declarations. I make these  
22 statements based on my personal knowledge.

23 1) I am the attorney for the Plaintiffs in this case.

24 2) Since the time Ms. French informed me that she was the attorney for the Defendants  
25 in this case we have attempted to come to an agreeable solution to our clients  
26 situation.

3) A short time after our discussions began Ms. French informed me that the Defendants  
had elected to "cancel" the foreclosure sale. I thanked her and her clients.

PAGE 1 - DECLARATION OF TERRY SCANNELL

TERRY SCANNELL  
Attorney at Law  
888 SW Fifth Avenue Suite 1500  
Portland Oregon 97204E

EXHIBIT 1  
PAGE 69

1 4) I told Ms. French that if her clients would simply state in writing that the foreclosure  
2 process would not be restarted during the pendency of the case we could cancel this  
3 hearing.

4 5) Ms. French told me that she was not authorized to make such a representation.

5 6) On Saturday, February 19, 2011 I wrote Ms. French a detailed email restating what I  
6 had told her on the phone. This being that my clients would cancel the hearing today  
7 if her clients would represent that the foreclosure process would not be restarted. As  
8 of this morning I had received no response.  
9

10  
11 DATED this 22<sup>nd</sup> day of February, 2011.  
12

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15 Terry Scannell  
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PAGE 2 - DECLARATION OF TERRY SCANNELL

**CERTIFICATE—TRUE COPY**

I hereby certify that the foregoing copy of PLAINTIFFS' REPLY TO SUPPORT MOTION FOR PRELLININARY INJUNCTION, THE DECLARATIONS OF TERRY SCANNELL and DOUGLAS A. JAMES is a complete and exact copy of the original.

Dated February 22, 2011.

Terry Scannell, OSB #853220  
Of Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing PLAINTIFFS' REPLY TO SUPPORT MOTION FOR PRELLININARY INJUNCTION, THE DECLARATIONS OF TERRY SCANNELL and DOUGLAS A. JAMES on the following persons on February 22<sup>nd</sup> 2011, by hand-delivering, faxing, or mailing (as indicated below) to each a true copy thereof, certified by me as such, and if mailed, contained in a sealed envelope, with postage paid, addressed to said attorneys at the last known address of each shown below and deposited in the post office on said day at Portland, Oregon:

Pilar French  
Lane Powell PC  
601 SW Second Avenue, Suite 2100  
Portland, OR 97204-3158  
Direct: 503.778.2170  
Cell: 503.467.9066  
[www.lanepowell.com](http://www.lanepowell.com)

☒ by hand-delivery  
☐ by facsimile  
☐ by first class mail  
☒ by e-mail

DATED this 22<sup>nd</sup> day of February, 2011.

TERRY SCANNELL, OSB #853220  
888 S.W. Fifth Avenue, Suite 650  
Portland, Oregon 97204-2021  
Telephone: (503) 776-0806  
Facsimile: (503) 274-1214  
[terry@scannellLaw.com](mailto:terry@scannellLaw.com)  
Attorney for Defendant

Filed 3/3/11

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

SCANNED TO DMS

**DOUGLAS A. JAMES and EILEEN M. JAMES**, Husband and Wife,

Plaintiffs,

vs.

**RECONTRUST COMPANY**, an Unknown Entity Operating in the State of Oregon, **BAC HOME LOAN SERVICING LIMITED PARTNERSHIP**, a Texas Limited Partnership, **MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC** a Delaware Corporation, **NORTHWEST MORTGAGE GROUP, INC.** an Oregon Corporation,

Defendants.

Case No. CV11020389

Defendants ReconTrust Company, N.A.,  
BAC Home Loans Servicing, LP, and  
Mortgage Electronic Registration Systems,  
Inc.'s  
**OBJECTION TO PLAINTIFFS'  
PROPOSED ORDER ON PRELIMINARY  
INJUNCTION**

Defendants BAC Home Loans Servicing, LP, Mortgage Electronic Registration Systems, Inc., and ReconTrust Company, N.A.<sup>1</sup> (collectively "defendants") object to plaintiffs' proposed "Order For Preliminary Injunction During Pendency of Case" because it does not contemplate a procedure for distribution of the bond in the event that plaintiffs fail to comply with the Order, which not only enjoins certain conduct of defendants but also requires plaintiffs to make a monthly payment of \$1,500 as security for the injunction.

This case is a dispute over plaintiffs' repayment obligations of a \$346,438 loan that was made to them in June 2007. (Pls'. Compl. Ex. 1 at 1.) Plaintiffs are in default on the Loan and have not made a single payment since April 1, 2010. On Tuesday February 22, 2011, the parties

<sup>1</sup> Defendants BAC Home Loans Servicing, LP and ReconTrust Company, N.A. have been incorrectly named in the caption.

PAGE 1 - DEFENDANTS' OBJECTION TO PLAINTIFFS' PROPOSED ORDER ON PRELIMINARY INJUNCTION



1 appeared before the Honorable Susie L. Norby on plaintiffs' motion for a preliminary injunction  
2 to stop defendants from proceeding with a non-judicial foreclosure to recover the unpaid debt  
3 owing by plaintiffs.

4 The Court decided that an injunction would not be proper unless plaintiffs were required  
5 to pay \$1,500 per month into the Court (which represents a little more than half of plaintiffs'  
6 monthly payment of \$2,863.14). (Pls'. Compl. Ex. 4 at 1.)

7 Although the parties did not expressly address the issue with the Court during the  
8 preliminary injunction hearing, the written Order should contemplate a procedure for redress in  
9 the event that plaintiffs fail to comply with the Order. Plaintiffs refuse to include language in  
10 their proposed Order to address this potential scenario. In contrast, defendants' proposed Order,  
11 attached hereto, does include such language.

12 Defendants' proposed Order makes better sense. ORCP 79D mandates that preliminary  
13 injunction orders "shall be specific in terms[.]" The purpose of the bond is to provide for "the  
14 payment of such costs, damages, and attorney fees as may be incurred or suffered by any party  
15 who is found to have been wrongfully enjoined or restrained." ORCP 82A(1)(a).

16 Defendants are not demanding that the Order specify that a breach by plaintiffs will  
17 automatically entitle them to all bond proceeds paid up to the date of any breach (although  
18 perhaps they should have, given that the monthly bond amount does not even cover the monthly  
19 payment owed by plaintiffs). Instead, defendants are merely proposing to include specific  
20 language that will recognize their right to petition the Court for redress pursuant to ORCP 82A if  
21 plaintiffs breach their payment obligations after insisting that defendants be subject to the  
22 extraordinary remedy of an injunction.<sup>2</sup> In contrast, plaintiffs' proposed order is ambiguous and  
23 does not provide any guidance to the Court or parties on what the remedies will be if plaintiffs  
24 breach their payment obligations. Ambiguity is only beneficial for plaintiffs (and not this Court

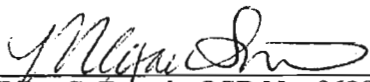
25 <sup>2</sup> The Court may recall that defendants argued that an injunction was unnecessary since the  
26 foreclosure sale at issue was cancelled.

1 or defendants) since it might enable them to continue to avoid their repayment obligations until  
2 this litigation is completely resolved, even in the face of a breach of the Order they asked this  
3 Court to enter.

4 For the foregoing reasons, the Court should sign the Order proposed by defendants.

5 DATED: March 3, 2011

6 LANE POWELL PC

7  
8 By   
9 Pilar C. French, OSB No. 962880  
10 Megan E. Smith, OSB No. 084758  
11 docketing-pdx@lanepowell.com  
12 Attorneys for Defendants ReconTrust Company,  
13 N.A., BAC Home Loans Servicing, LP, and  
14 Mortgage Electronic Registration Systems, Inc.  
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PAGE 3 - DEFENDANTS' OBJECTION TO PLAINTIFFS' PROPOSED ORDER ON  
PRELIMINARY INJUNCTION

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3  
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF CLACKAMAS

6 **DOUGLAS A. JAMES and EILEEN M.**  
7 **JAMES, Husband and Wife,**

8 Plaintiffs,

9 vs.

10 **RECONTRUST COMPANY, an Unknown**  
11 **Entity Operating in the State of Oregon, BAC**  
12 **HOME LOAN SERVICING LIMITED**  
13 **PARTNERSHIP, a Texas Limited**  
14 **Partnership, MORTGAGE ELECTRONIC**  
15 **REGISTRATION SYSTEM, INC a**  
16 **Delaware Corporation, NORTHWEST**  
17 **MORTGAGE GROUP, INC. an Oregon**  
18 **Corporation,**

19 Defendants.

Case No. CV11020389

[PROPOSED] ORDER FOR A  
PRELIMINARY INJUNCTION DURING  
PENDENCY OF THIS CASE

20 Plaintiffs' motion for an order for a preliminary injunction came before the Court on  
21 February 22, 2011. Plaintiffs were represented by Terry Scannell and Defendants (with the  
22 exception of Northwest Mortgage Group, Inc.) by Pilar French.

23 Based on the record, including the verified Complaint, the Declarations of the Plaintiff  
24 and Mr. Scannell, the Declaration of the Defendant ReconTrust Company, along with the  
25 supporting Memorandums of law by all the parties and the oral argument, the Court finds solely  
26 in the context of this case that:

1. If Defendants are not immediately restrained from foreclosing on the real property  
located at 30366 SW Ruth St. Unit 70, Wilsonville, Oregon located in Clackamas County,  
Oregon, Plaintiffs will suffer irreparable injury, loss, or damage in the form of the loss of their

PAGE 1 - [PROPOSED] ORDER FOR A PRELIMINARY INJUNCTION DURING  
PENDENCY OF THIS CASE

1 primary residence and the loss of equity in the home. In addition, the Court finds that this  
2 Preliminary Injunction is necessary to preserve the status quo during the pendency of this case.

3 2. The Court finds that all the Defendants were either served by the time of the  
4 hearing or had actual notice of the hearing.

5 **It is therefore ORDERED as follows:**

6 1. Defendant RECONTRUST COMPANY, N.A. (which has been incorrectly named  
7 in the caption), BAC HOME LOAN SERVICING LIMITED PARTNERSHIP, a Texas Limited  
8 Partnership, MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC., a Delaware  
9 Corporation, NORTHWEST MORTGAGE GROUP, INC., an Oregon Corporation and their  
10 officers, agents, servants, employees, and lawyers, and all other persons in active concert or  
11 participation with any of them who receive actual notice of this order, by personal service or  
12 otherwise, are directed not to conduct the sale of the real property located at 30366 SW Ruth St.  
13 Unit 70, Wilsonville, Oregon during the pendency of this litigation.

14 2. This order shall remain in effect unless it is dissolved by the Court or unless the  
15 Plaintiffs fail to pay into the Court by cash or a check in the amount of \$1,500 a month, as a  
16 bond, during the pendency of this case. The Plaintiffs have already posted a cash bond of \$500  
17 to maintain the Temporary Restraining Order and for that reason the Court Orders that the next  
18 monthly payment on the bond shall be due on March 1, 2011. The bond shall be paid into this  
19 Court each month, during the pendency of this case, on the first of every month thereafter with  
20 three days allowed for mailing. In the event that any of the bond payments are not received  
21 within the time allowed or any check for payment is not honored or paid, the injunction shall be  
22 dissolved without further Order of the Court, and Defendants may proceed to foreclose on the  
23 subject property in accordance with all applicable Oregon laws and regulations. In such event,  
24  
25  
26

1 Defendants may also petition the Court to release monies held as bond to Defendants in partial  
2 satisfaction of arrearages on the underlying debt.

3 DATED this \_\_\_\_ day of March, 2011.

4  
5 \_\_\_\_\_  
Circuit Court Judge

6 BOND APPROVED AND ORDER ISSUED:

7 Date: \_\_\_\_\_

8 Time: \_\_\_\_\_

9  
10 \_\_\_\_\_  
Circuit Court Judge

11  
12 Respectfully Submitted by:

13 LANE POWELL PC

14 By: \_\_\_\_\_

15 Pilar C. French, OSB No. 962880  
16 Megan E. Smith, OSB No. 084758  
17 Attorneys for Defendants ReconTrust  
Company, N.A., BAC Home Loans  
18 Servicing, LP, and Mortgage Electronic  
Registration Systems, Inc.  
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PAGE 3 - [PROPOSED] ORDER FOR A PRELIMINARY INJUNCTION DURING  
PENDENCY OF THIS CASE

**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2011, I caused to be served a copy of the foregoing  
OBJECTION TO PLAINTIFFS' PROPOSED ORDER ON PRELIMINARY INJUNCTION on  
the following person(s) in the manner indicated below at the following address(es):

Terry Scannell, Esq.  
888 SW Fifth Avenue, Suite 650  
Portland, OR 97204  
Facsimile: (503) 274-1214  
E-Mail: terry@scannellaw.com

- ☐ by CM/ECF  
☐ by Electronic Mail  
☒ by Facsimile Transmission  
☒ by First Class Mail  
☐ by Hand Delivery  
☐ by Overnight Delivery

  
Megan E. Smith

CERTIFICATE OF SERVICE

Filed w/p/c  
3.3.11

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

SCANNED TO DMS

**DOUGLAS A. JAMES and EILEEN M. JAMES**, Husband and Wife,

Plaintiffs,

vs.

**RECONTRUST COMPANY**, an Unknown Entity Operating in the State of Oregon, **BAC HOME LOAN SERVICING LIMITED PARTNERSHIP**, a Texas Limited Partnership, **MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC** a Delaware Corporation, **NORTHWEST MORTGAGE GROUP, INC.** an Oregon Corporation,

Defendants.

Case No. CV11020389

[PROPOSED] ORDER FOR A  
PRELIMINARY INJUNCTION DURING  
PENDENCY OF THIS CASE

Plaintiffs' motion for an order for a preliminary injunction came before the Court on February 22, 2011. Plaintiffs were represented by Terry Scannell and Defendants (with the exception of Northwest Mortgage Group, Inc.) by Pilar French.

Based on the record, including the verified Complaint, the Declarations of the Plaintiff and Mr. Scannell, the Declaration of the Defendant ReconTrust Company, along with the supporting Memorandums of law by all the parties and the oral argument, the Court finds solely in the context of this case that:

1. If Defendants are not immediately restrained from foreclosing on the real property located at 30366 SW Ruth St. Unit 70, Wilsonville, Oregon located in Clackamas County, Oregon, Plaintiffs will suffer irreparable injury, loss, or damage in the form of the loss of their

PAGE 1 - [PROPOSED] ORDER FOR A PRELIMINARY INJUNCTION DURING  
PENDENCY OF THIS CASE

1 primary residence and the loss of equity in the home. In addition, the Court finds that this  
2 Preliminary Injunction is necessary to preserve the status quo during the pendency of this case.

3 2. The Court finds that all the Defendants were either served by the time of the  
4 hearing or had actual notice of the hearing.

5 **It is therefore ORDERED as follows:**

6 1. Defendant RECONTRUST COMPANY, N.A. (which has been incorrectly named  
7 in the caption), BAC HOME LOAN SERVICING LIMITED PARTNERSHIP, a Texas Limited  
8 Partnership, MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC., a Delaware  
9 Corporation, NORTHWEST MORTGAGE GROUP, INC., an Oregon Corporation and their  
10 officers, agents, servants, employees, and lawyers, and all other persons in active concert or  
11 participation with any of them who receive actual notice of this order, by personal service or  
12 otherwise, are directed not to conduct the sale of the real property located at 30366 SW Ruth St.  
13 Unit 70, Wilsonville, Oregon during the pendency of this litigation.

14 2. This order shall remain in effect unless it is dissolved by the Court or unless the  
15 Plaintiffs fail to pay into the Court by cash or a check in the amount of \$1,500 a month, as a  
16 bond, during the pendency of this case. The Plaintiffs have already posted a cash bond of \$500  
17 to maintain the Temporary Restraining Order and for that reason the Court Orders that the next  
18 monthly payment on the bond shall be due on March 1, 2011. The bond shall be paid into this  
19 Court each month, during the pendency of this case, on the first of every month thereafter with  
20 three days allowed for mailing. In the event that any of the bond payments are not received  
21 within the time allowed or any check for payment is not honored or paid, the injunction shall be  
22 dissolved without further Order of the Court, and Defendants may proceed to foreclose on the  
23 subject property in accordance with all applicable Oregon laws and regulations. In such event,  
24  
25  
26



1 Defendants may also petition the Court to release monies held as bond to Defendants in partial  
2 satisfaction of arrearages on the underlying debt.

3 DATED this \_\_\_\_ day of March, 2011.  
4

5 \_\_\_\_\_  
Circuit Court Judge

6 BOND APPROVED AND ORDER ISSUED:

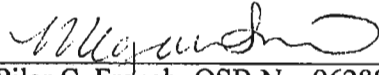
7 Date: \_\_\_\_\_

8 Time: \_\_\_\_\_  
9

10 \_\_\_\_\_  
Circuit Court Judge

11  
12 Respectfully Submitted by:

13 LANE POWELL PC

14 By:   
15 Pilar C. French, OSB No. 962880  
Megan E. Smith, OSB No. 084758  
16 Attorneys for Defendants ReconTrust  
Company, N.A., BAC Home Loans  
17 Servicing, LP, and Mortgage Electronic  
Registration Systems, Inc.  
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26

PAGE 3 - [PROPOSED] ORDER FOR A PRELIMINARY INJUNCTION DURING  
PENDENCY OF THIS CASE

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 3, 2011, I caused to be served a copy of the foregoing  
3 [PROPOSED] ORDER FOR PRELIMINARY INJUNCTION DURING PENDENCY OF THIS  
4 CASE on the following person(s) in the manner indicated below at the following address(es):

5 Terry Scannell, Esq.  
6 888 SW Fifth Avenue, Suite 650  
7 Portland, OR 97204  
8 Facsimile: (503) 274-1214  
9 E-Mail: terry@scannellaw.com

- 10 ☐ by CM/ECF  
11 ☐ by Electronic Mail  
12 ☒ by Facsimile Transmission  
13 ☒ by First Class Mail  
14 ☐ by Hand Delivery  
15 ☐ by Overnight Delivery

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Megan E. Smith

CERTIFICATE OF SERVICE

Ms French

**TERRY SCANNELL**  
Attorney at Law  
888 SW 5<sup>th</sup> Avenue, Suite 650  
Portland, Oregon 97204-2021  
(503) 776-0806  
(503) 274-1214 fax  
terry@scannellLaw.com

COPY

RECEIVED

MAR 04 2011

LANE POWELL PC

March 2, 2011

**By HAND ONLY**

The Honorable Judge Susie Norby  
Clackamas County Courthouse  
807 Main Street  
Oregon City, OR 97045

Re: ***Douglas A. James v. ReconTrust Company, et al***  
Clackamas County Circuit Court Case No. CV11020389

Dear Judge Norby:

Despite an effort to come to an agreement on the proposed Order over the last week, counsel were unable to do so. The issue centers on a sentence which was proposed by the Defendants, which reads:

"In such event, Defendants may also petition the Court to release monies held as bond to Defendants in partial satisfaction of arrearages on the underlying debt."

The "in such event" language references the Plaintiffs' not continuing to pay the \$1,500 a month into the Court as a bond. The Plaintiffs' position is that in the event that they do not continue to pay the \$1,500 into the Court, that the injunction is dissolved; nothing more or less.

The Plaintiffs are concerned that, as proposed by the Defendants, if the Plaintiffs are unable to make these payments this event in itself will trigger the release of the bond to the Defendants. The Plaintiffs' position is that failing to be able to pay the monthly bond payments does not show that the injunction was wrongfully issued (the event that the Plaintiffs think should trigger the bond's release) but rather shows that they could not continue to pay the bond payments. In the Plaintiffs' view, the release of the bond needs to be contingent on the final

EXHIBIT 1

PAGE 83

disposition of the wrongful foreclosure action not on whether they were able to make the bond payments. The Plaintiffs do understand that if they fail to make the bond payments their risk is that the Defendants could restart the foreclosure process.


The Defendants position is not clear to me at this time. The Plaintiffs agree that any party can petition the Court for a release of bond funds at any time. If that is the Defendants intent with this language then, there is no objection to it, and I have made an effort to incorporate this concept into the draft Order. But, in attempting to come to a resolution on this issue, it seems that the Defendants have more in mind. For that reason, the Plaintiffs respectfully object to the last language we received from the Defendants.

For the convenience of the Court I was going to send a Word file with both Orders to the Court. Now my understanding is that the Defendants will be writing to you and sending a copy of their draft Order. I will send the Plaintiffs' draft Order electronically as well.

Finally, there is no UTCR 5.100 Certificate attached. This is due to the fact that my draft Order was emailed to Ms. French on February 23, 2011. I neglected to formally serve it on her. I have attached a copy of an email from Ms. Smith who urged me to move ahead. Ms. Smith is an associate of Ms. French.

The Defendants have had an opportunity to see the draft Order and make their position known and I assume that Ms. Smith's email is a waiver of any objection they have based on UTCR 5.100. As we move forward, I will make sure to adhere more closely to the formalities of the Court.

Thank you,

  
Terry Scannell ✓

cc: Douglas James  
Pilar French

**Terry Scannell**

---

**From:** Smith, Megan E. [SmithME@LanePowell.com]  
**Sent:** Wednesday, March 02, 2011 11:43 AM  
**To:** Terry Scannell  
**Cc:** French, Pilar; Pinkley, Libbi  
**Subject:** James - Revised Order re Prelim Injunction  
**Attachments:** 908798\_1.DOCX

Hi Terry,

I understand, and agree that we don't want to delay this. Please go ahead and submit plaintiff's form of proposed order to the court, and under cover letter, let the court know that we object to plaintiff's form of the order and that we will be submitting our own proposed form of order for the court to decide. So you are aware, we made one additional change to the proposed order since the last one I sent you. The red-line order with that change is attached. The most recent change is on page 2, and just has to do with correctly naming defendant RECONTRUST COMPANY, N.A.

Unless there is something further you want to discuss, I think we can go ahead and cancel our phone conference at 4.

Thanks,  
Megan

**Megan E. Smith**



Attorney at Law, Bio | VCard  
Lane Powell PC  
601 SW Second Avenue, Suite 2100  
Portland, OR 97204-3158  
Direct: 503.778.2184  
Cell: 503.680.7394  
[www.lanepowell.com](http://www.lanepowell.com)

RECEIVED

MAR 04 2011

LANE POWELL PC

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS COUNTY

**DOUGLAS A. JAMES and EILEEN M. JAMES**, Husband and Wife,

Plaintiffs,

vs.

**RECONTRUST COMPANY**, an Unknown Entity Operating in the State of Oregon, **BAC HOME LOAN SERVICING LIMITED PARTNERSHIP**, a Texas Limited Partnership, **MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC.** a Delaware Corporation, **NORTHWEST MORTGAGE GROUP, INC.** an Oregon Corporation.

Defendants.

Case No: CV11020389.

**ORDER FOR A PRELIMINARY INJUNCTION DURING PENDENCY OF THIS CASE**

**TO: ALL Defendants**

Plaintiff's motion for an order for a preliminary injunction came before the Court on February 22, 2011. The Plaintiffs were represented by Terry Scannell and the Defendants (with the exception of Northwest Mortgage Group, Inc) by Pilar French.

Based on the record, including the verified Complaint, the Declarations of the Plaintiff and Mr. Scannell, the Declaration of the Defendant ReconTrust Company, along with the supporting Memorandums of law by all the parties and the oral argument, the court finds solely in the context of this case that:

1           1.     If Defendants are not immediately restrained from foreclosing on the real property  
2 located at 30366 SW Ruth St. Unit 70, Wilsonville, OR located in Clackamas County, Oregon,  
3 Plaintiffs will suffer irreparable injury, loss, or damage in the form of the loss of their primary  
4 residence and the loss of equity in the home. In addition, the Court finds that this Preliminary  
5 Injunction is necessary to preserve the status quo during the pendency of this case.

6           2.     The Court finds that all the Defendants were either served by the time of the  
7 hearing or had actual notice of the hearing.

8           **It is therefore ORDERED as follows:**

9  
10          1.     Defendant RECONTRUST COMPANY, an Unknown Entity Operating in the  
11 State of Oregon, BAC HOME LOAN SERVICING LIMITED PARTNERSHIP, a Texas  
12 Limited Partnership, MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC., a  
13 Delaware Corporation, NORTHWEST MORTGAGE GROUP, INC., an Oregon Corporation  
14 and their officers, agents, servants, employees, and lawyers, and all other persons in active  
15 concert or participation with any of them who receive actual notice of this order, by personal  
16 service or otherwise, are directed not to conduct the sale of the real property located at 30366  
17 SW Ruth St. Unit 70, Wilsonville, OR during the pendency of this litigation.

18  
19          2.     This order shall remain in effect unless it is dissolved by the Court or unless the  
20 Plaintiffs fail to pay into the Court by cash or a check in the amount of \$1,500 a month, as a  
21 bond, during the pendency of this case. The Plaintiffs have already posted a cash bond of \$500  
22 to maintain the Temporary Restraining Order and for that reason the Court Orders that the next  
23 monthly payment on the bond shall be due on March 1, 2011. The bond shall be paid into this  
24 Court each month, during the pendency of this case, on the first of every month thereafter with  
25  
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1 three days allowed for mailing. In the event that any of the bond payments are not received  
2 within the time allowed or any check for payment is not honored or paid, the injunction shall be  
3 dissolved without further Order of the Court, and Defendants may proceed to foreclose on the  
4 subject property in accordance with all applicable laws and regulations.

5 During the course of the litigation the Defendants may petition the Court to release  
6 monies held as bond to the Defendants for the payment of taxes and the reasonable costs of  
7 property insurance for the property.  
8

9  
10  
11 DATED this 3<sup>rd</sup> day of March, 2011.  
12  
13

14 /s/ \_\_\_\_\_  
15

16 Circuit Court Judge

17 BOND APPROVED

18 AND ORDER ISSUED:  
19

20 Date: \_\_\_\_\_  
21

22 Time: \_\_\_\_\_  
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1  
2  
3 /s/

4 Circuit Court Judge  
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11 Respectfully Submitted by:  
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14

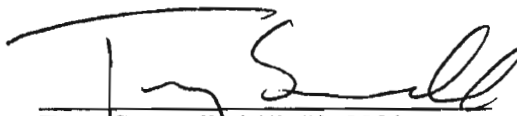
Terry Scannell (OSB #853220)  
888 SW Fifth Avenue, Suite 650  
Portland, Oregon 97204  
Tel: (503) 776-0806, Fax: (503) 274-1214  
E-mail: terry@scannellLaw.com  
Of Attorneys for Plaintiffs

15  
16  
17  
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19 ///  
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**CERTIFICATE—TRUE COPY**

I hereby certify that the foregoing copy of PROPOSED ORDER FOR PRELIMINARY INJUNCTION, LETTER TO JUDGE NORBY is a complete and exact copy of the original.

Dated March 3, 2011.

  
Terry Scannell, OSB #853220  
Of Attorneys for Defendant

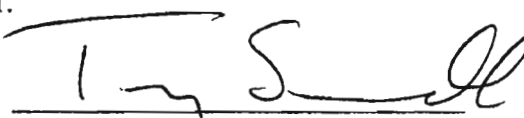
**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing PROPOSED ORDER FOR PRELIMINARY INJUNCTION, LETTER TO JUDGE NORBY on the following persons on March 3, 2011, by hand-delivering, faxing, or mailing (as indicated below) to each a true copy thereof, certified by me as such, and if mailed, contained in a sealed envelope, with postage paid, addressed to said attorneys at the last known address of each shown below and deposited in the post office on said day at Portland, Oregon:

Pilar French  
Lane Powell PC  
601 SW 2nd Ave Ste 2100  
Portland OR 97204

☐ by hand-delivery  
☒ by facsimile  
☒ by first class mail  
☐ by e-mail

DATED this 3rd day of March, 2011.

  
TERRY SCANNELL, OSB #853220  
888 S.W. Fifth Avenue, Suite 650  
Portland, Oregon 97204-2021  
Telephone: (503) 776-0806  
Facsimile: (503) 274-1214  
[terry@scannellLaw.com](mailto:terry@scannellLaw.com)  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on March 16, 2011, I caused to be served a copy of the foregoing NOTICE OF REMOVAL on the following person(s) in the manner indicated below at the following address(es):

Terry Scannell, Esq.  
888 SW Fifth Avenue, Suite 650  
Portland, OR 97204  
Facsimile: (503) 274-1214  
E-Mail: terry@scannellaw.com

*Attorney for Plaintiffs*

Robert J. Pratte, Esq. (pending pro hac vice)  
DLA Piper LLP  
90 S Seventh Street, Suite 5100  
Minneapolis, MN 55402-4168  
Facsimile: (612) 524-3070  
E-Mail: robert.pratte@dlapiper.com

*Attorney for Mortgage Electronic Registration  
Systems, Inc.*

- ☐ by **CM/ECF**
- ☐ by **Electronic Mail**
- ☐ by **Facsimile Transmission**
- ☒ by **First Class Mail**
- ☐ by **Hand Delivery**
- ☐ by **Overnight Delivery**

---

Megan E. Smith

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3  
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF CLACKAMAS

6 **DOUGLAS A. JAMES and EILEEN M.**  
7 **JAMES, Husband and Wife,**

8 Plaintiffs,

9 vs.

10 **RECONTRUST COMPANY, an Unknown**  
11 **Entity Operating in the State of Oregon, BAC**  
12 **HOME LOAN SERVICING LIMITED**  
13 **PARTNERSHIP, a Texas Limited**  
14 **Partnership, MORTGAGE ELECTRONIC**  
15 **REGISTRATION SYSTEM, INC a**  
16 **Delaware Corporation, NORTHWEST**  
17 **MORTGAGE GROUP, INC. an Oregon**  
18 **Corporation,**

19 Defendants.

Case No. CV11020389

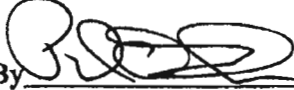
NOTICE OF FILING OF ORIGINAL  
DECLARATION

20 Please take notice that the original Declaration of Leticia Quintana in Support of Certain  
21 Defendants' Response to Show Cause Order is being filed with this notice. A copy of the  
22 original declaration has previously been filed with the Court and this notice is intended to advise  
23 of the filing of the original of that declaration, which is attached to this notice.

24 DATED: March 9, 2011

25 LANE POWELL PC

26 By

  
Pilar C. French, OSB No. 962880  
Megan E. Smith, OSB No. 084758  
docketing-pdx@lanepowell.com  
Attorneys for Defendants ReconTrust Company;  
BAC Home Loan Servicing; and Mortgage  
Electronic Registration System

PAGE 1 - NOTICE OF FILING OF ORIGINAL DECLARATION

1  
2  
3  
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF CLACKAMAS

6 DOUGLAS A. JAMES and EILEEN M.  
7 JAMES, Husband and Wife,

8 Plaintiffs,

9 vs.

10 RECONTRUST COMPANY, an Unknown  
11 Entity Operating in the State of Oregon, BAC  
12 HOME LOAN SERVICING LIMITED  
13 PARTNERSHIP, a Texas Limited  
14 Partnership, MORTGAGE ELECTRONIC  
15 REGISTRATION SYSTEM, INC a  
16 Delaware Corporation, NORTHWEST  
17 MORTGAGE GROUP, INC. an Oregon  
18 Corporation,

19 Defendants.

)  
)  
) Case No. CV11020389

)  
) DECLARATION OF LETICIA QUINTANA  
) IN SUPPORT OF CERTAIN  
) DEFENDANTS' RESPONSE TO SHOW  
) CAUSE ORDER

20 I, Leticia Quintana, declare as follows:

21 1. I am employed in the Trustee Services department of ReconTrust Company, N.A.  
22 ("ReconTrust"), which has been incorrectly named in the caption. I make this declaration based  
23 on my own personal knowledge and if called as a witness, I could and would competently testify  
24 to the facts stated herein.

25 2. ReconTrust is serving as the successor trustee for the trust deed and non-judicial  
26 foreclosure sale at issue in this case. On February 17, 2011, ReconTrust was instructed to cancel  
the non-judicial foreclosure sale, which is currently scheduled for March 9, 2011.

3. A Notice of Rescission for the sale is being prepared and will be recorded in the  
County Recorder's Office for Clackamas County but, due to the holiday weekend, probably will

PAGE 1 - DECLARATION OF LETICIA QUINTANA IN SUPPORT OF MOTION TO  
VACATE SHOW CAUSE ORDER

LIBW/1772613.1

LANE POWELL PC  
601 SW SECOND AVENUE, SUITE 2100  
PORTLAND, OREGON 97204-3158  
503.778.2100 FAX: 503.778.2200

EXHIBIT

PAGE

1  
93

1 not be recorded by the time this Court holds the order to show cause hearing scheduled for  
2 February 22, 2011.

3

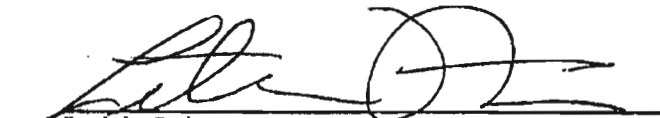
4 I hereby declare that the above statement is true to the best of my knowledge and belief,  
5 and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

6 Executed on February 18, 2011, in Simi Valley, California.

7

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9

  
Leticia Quintana

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PAGE 2 - DECLARATION OF LETICIA QUINTANA IN SUPPORT OF MOTION TO  
VACATE SHOW CAUSE ORDER

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 9, 2011, I caused to be served a copy of the foregoing  
3 NOTICE OF FILING OF ORIGINAL DECLARATION on the following person(s) in the  
4 manner indicated below at the following address(es):

5 Terry Scannell, Esq.  
6 888 SW Fifth Avenue, Suite 650  
7 Portland, OR 97204  
8 Facsimile: (503) 274-1214  
9 E-Mail: terry@scannellaw.com

10 *Attorney for Plaintiffs*

Robert J. Pratte, Esq. (pending pro hac vice)  
DLA Piper LLP  
90 S Seventh Street, Suite 5100  
Minneapolis, MN 55402-4168  
Facsimile: (612) 524-3070  
E-Mail: robert.pratte@dlapiper.com

*Attorney for Mortgage Electronic Registration  
Systems, Inc.*

- 10 ☐ by CM/ECF  
11 ☐ by Electronic Mail  
12 ☐ by Facsimile Transmission  
13 ☒ by First Class Mail  
14 ☐ by Hand Delivery  
15 ☐ by Overnight Delivery

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18 Pilar C. French

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CERTIFICATE OF SERVICE

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF CLACKAMAS

6 DOUGLAS A. JAMES and EILEEN M.  
JAMES, Husband and Wife,

7  
8 Plaintiffs,

9 vs.

10 RECONTRUST COMPANY, an Unknown  
Entity Operating in the State of Oregon, BAC  
11 HOME LOAN SERVICING LIMITED  
Partnership, a Texas Limited  
12 REGISTRATION SYSTEM, INC a  
Delaware Corporation, NORTHWEST  
13 MORTGAGE GROUP, INC. an Oregon  
Corporation,

14 Defendants.  
15

) Case No. CV11020389

) ORDER GRANTING DEFENDANT'S  
) MOTION FOR ADMISSION PRO HAC  
) VICE OF ROBERT J. PRATTE

16 Based upon the motion and supporting Oregon State Bar Certificate of Compliance for  
17 Pro Hac Vice Admission,

18 IT IS HEREBY ORDERED that defendant Mortgage Electronic Registration System,  
19 Inc.'s ("MERS") motion is granted and that Robert J. Pratte may appear as associated counsel for  
20 MERS in this proceeding.

21 DATED: March \_\_\_\_, 2011  
22

23 \_\_\_\_\_  
Circuit Court Judge

24 Submitted by:

25 Pilar C. French, OSB No. 962880  
Attorneys for Defendants ReconTrust Company,  
26 BAC Home Loan Servicing, and MERS

PAGE 1 - ORDER GRANTING DEFENDANT'S MOTION FOR ADMISSION PRO HAC  
VICE OF ROBERT J. PRATTE



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 9, 2011, I caused to be served a copy of the foregoing  
3 [PROPOSED] ORDER GRANTING DEFENDANT MERS' MOTION FOR ADMISSION PRO  
4 HAC VICE OF ROBERT J. PRATTE on the following person(s) in the manner indicated below  
5 at the following address(es):

6 Terry Scannell, Esq.  
7 888 SW Fifth Avenue, Suite 650  
8 Portland, OR 97204  
9 Facsimile: (503) 274-1214  
E-Mail: terry@scannellaw.com

10 *Attorney for Plaintiffs*

Robert J. Pratte, Esq. (pending pro hac vice)  
DLA Piper LLP  
90 S Seventh Street, Suite 5100  
Minneapolis, MN 55402-4168  
Facsimile: (612) 524-3070  
E-Mail: robert.pratte@dlapiper.com

11 *Attorney for Mortgage Electronic Registration  
Systems, Inc.*

12 ☐ by CM/ECF  
13 ☒ by Electronic Mail  
14 ☐ by Facsimile Transmission  
15 ☒ by First Class Mail  
16 ☐ by Hand Delivery  
17 ☐ by Overnight Delivery

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19 Pilar C. French

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6 DOUGLAS A. JAMES and EILEEN M.  
7 JAMES, Husband and Wife,

8 Plaintiffs,

9 vs.

10 RECONTRUST COMPANY, an Unknown  
11 Entity Operating in the State of Oregon, BAC  
12 HOME LOAN SERVICING LIMITED  
13 PARTNERSHIP, a Texas Limited  
14 Partnership, MORTGAGE ELECTRONIC  
15 REGISTRATION SYSTEM, INC a  
16 Delaware Corporation, NORTHWEST  
17 MORTGAGE GROUP, INC. an Oregon  
18 Corporation,

19 Defendants.

) Case No. CV11020389

) MOTION FOR ADMISSION PRO HAC  
) VICE—ROBERT J. PRATTE


20 Pursuant to UTCR 3.170, defendant Mortgage Electronic Registration System, Inc.,  
21 ("MERS") through their local counsel, Pilar C. French of Lane Powell PC, moves the Court for  
22 an order allowing attorney Robert J. Pratte to appear pro hac vice in the above-entitled case on  
23 behalf of MERS along with Pilar C. French.  
24  
25  
26

PAGE 1 - MOTION FOR ADMISSION PRO HAC VICE—ROBERT J. PRATTE

1 This motion is supported by the attached Oregon State Bar Certificate of Compliance for  
2 *Pro Hac Vice* Admission and Acknowledgment of Receipt, which has been approved by the  
3 Oregon State Bar.

4 DATED: March 9, 2011

5 LANE POWELL PC

6  
7 By   
8 Pilar C. French, OSB No. 962880  
9 Megan E. Smith, OSB No. 084758  
10 docketing-pdx@lanepowell.com  
11 Attorneys for Defendants ReconTrust Company;  
12 BAC Home Loan Servicing; and Mortgage  
13 Electronic Registration System  
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PAGE 2 - MOTION FOR ADMISSION PRO HAC VICE—ROBERT J. PRATTE

In re: Robert J. Pratte  
Name of Out-of-State Attorney

**Certificate of Compliance  
For Pro Hac Vice Admission**

I, Robert J. Pratte (print name), am an attorney in the State of Minnesota and I intend to seek *pro hac vice* admission in accordance with ORS 9.241 and UTCR 3.170 in the following Oregon court action or proceeding:

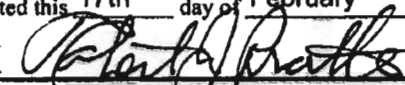
Case Name: Douglas and Eileen James v. Recontrust Company, et al.

Court: Circuit Court, Clackamas County, Oregon Case No.: CV11020389

I certify that (check all that apply):

- ☒ I am an attorney in good standing in the State of Minnesota, as evidenced by the attached good standing certificate issued by the licensing authority in that state.
- ☒ I am not subject to any pending disciplinary proceedings in any jurisdiction; or
- ☐ I am subject to pending disciplinary proceedings in another jurisdiction, the nature and status of which are described in an attachment to this certificate.
- ☒ I intend to associate in the above-referenced action or proceeding with Pilar C. French, OSB No. 962880, an active member in good standing of the Oregon State Bar, who will participate meaningfully in the matter.
- ☒ I will comply with applicable statutes, laws, and procedural rules of the State of Oregon; be familiar with and comply with disciplinary rules of the Oregon State Bar; and submit to the jurisdiction of the Oregon courts and Oregon State Bar with respect to acts and omissions occurring during my *pro hac vice* admission.
- ☒ My private law practice activities in Oregon are covered by professional liability insurance substantially equivalent to the Oregon State Bar Professional Liability Fund plan, as evidenced by the attached certificate of insurance coverage.
- ☒ I agree, as a continuing obligation of *pro hac vice* admission, to notify the trial court promptly of any changes in my insurance coverage, or my admission or disciplinary status in any other jurisdiction.
- ☒ I will provide to the Oregon State Bar a copy of the order admitting me *pro hac vice* in the above-referenced matter when such an order is granted. In the event *pro hac vice* admission is revoked for any reason, I will promptly notify the Oregon State Bar.
- ☒ I submit \$250 to the Oregon State Bar as payment of the *pro hac vice* fee established by ORS 9.241 and the rules of the Oregon Supreme Court. I acknowledge that this fee is for a period of twelve months from the date of the Acknowledgment of Receipt issued below, and that an additional fee of \$250 will be required in order for me to continue my *pro hac vice* admission in the matter for every twelve-month period thereafter.

Dated this 17th day of February, 2011.

X   
(Applicant Signature)

Mailing Address: 90 South Seventh Street

Suite 5100

Minneapolis, MN 55402-4168

Minnesota Bar No.: 8802X

(Home Jurisdiction)

Phone: 612-524-3030

FAX: 612-524-3070

Email: robert.pratte@dlapiper.com

**Acknowledgment of Receipt**

I, Jeffrey D. Sapiro, Regulatory Services Counsel of the Oregon State Bar, acknowledge receipt from the above-named out-of-state attorney of the Certificate of Compliance for Pro Hac Vice Admission and attachments, and the \$250 fee for pro hac vice appearance in the above-referenced Oregon action or proceeding. The fee is for a period of twelve months from the date of this acknowledgment.

Dated this 28th day of February, 2011.

☒ SEE MATERIALS ATTACHED:

Note that the professional liability coverage deductible substantially exceeds that of the PLF.

  
Jeffrey D. Sapiro, Regulatory Services Counsel



## Verification of Insurance

We, the undersigned Insurance Brokers, hereby verify that Continental Casualty Company and Various Insurance Companies have issued the following described insurance, each for their own part and not one for the other, and which is in force as of the date hereof:

**Issued to:** Circuit Court of the State of Oregon, Clackamas County

**Type of Insurance:** ☒ Professional Indemnity Insurance

**Name of Assured:** ☒ DLA Piper LLP (US) and others, as more fully described in the Primary Policy Wording.

**Policy No.** 198276743

**Insurer:** Continental Casualty Company and Various Insurance Companies ☒

**Period:** 12:01 a.m. December 1, 2010 to 12:01 a.m. December 1, 2011 ☒

**Limit:** In excess of \$10,000,000 per claim (as more fully described in the Policy wording) (Limits shown are as requested)

**Retention:** This confirms that our deductible is in excess of \$10,000.00. ☒

**Geographical Limitation:** Worldwide Coverage

Subject to the terms, conditions, exclusions and limitations of the Policy(ies).

This document is furnished as a matter of information only. The issuance of this document does not make the person or organization to whom it is issued an additional Assured, nor does it modify in any manner the contract of insurance between the Assured and the Insurers. Any amendment, change or extension of such contract can only be effected by specific endorsement attached thereto.

Aon Risk Services Central, Inc.

**Date:** February 24, 2011

**Per:**

Christopher Burroughs  
Assistant Vice President

Professions Practice | Aon Risk Services Central, Inc.  
200 East Randolph Street | 12<sup>th</sup> Floor | Chicago, IL 60601  
t: +1.312.381.4000 | f: +1.312.381.7007  
w: aon.com

EXHIBIT

PAGE

101

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 9, 2011, I caused to be served a copy of the foregoing  
3 MOTION FOR ADMISSION PRO HAC VICE—ROBERT J. PRATTE on the following  
4 person(s) in the manner indicated below at the following address(es):

5 Terry Scannell, Esq.  
6 888 SW Fifth Avenue, Suite 650  
7 Portland, OR 97204  
8 Facsimile: (503) 274-1214  
9 E-Mail: terry@scannellaw.com

10 *Attorney for Plaintiffs*

Robert J. Pratte, Esq. (pending pro hac vice)  
DLA Piper LLP  
90 S Seventh Street, Suite 5100  
Minneapolis, MN 55402-4168  
Facsimile: (612) 524-3070  
E-Mail: robert.pratte@dlapiper.com

*Attorney for Mortgage Electronic Registration  
Systems, Inc.*

- 11 ☐ by CM/ECF  
12 ☒ by Electronic Mail  
13 ☐ by Facsimile Transmission  
14 ☒ by First Class Mail  
15 ☐ by Hand Delivery  
16 ☐ by Overnight Delivery

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19 Pilar C. French

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CERTIFICATE OF SERVICE

116589.0300/910753.1

LANE POWELL PC  
601 SW SECOND AVENUE, SUITE 2100  
PORTLAND, OREGON 97204-3158  
503.778.2100 FAX: 503.778.2200

EXHIBIT 1

PAGE 102

Pilar C. French , OSB No. 962880  
Megan E. Smith, OSB No. 084758  
Docketing-pdx@lanepowell.com  
LANE POWELL, PC  
601 SW Second Avenue, Suite 2100  
Portland, Oregon 97204  
Tel.: 503.778.2100  
Fax: 503.778.2200

Attorneys for Defendants:  
*ReconTrust Company; BAC Home Loan  
Servicing Limited Partnership; and Mortgage  
Electronic Registration System, Inc.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION**

**DOUGLAS A. JAMES and EILEEN M.  
JAMES, Husband and Wife,**

Plaintiffs,

v.

**RECONTRUST COMPANY**, an unknown  
entity operating in the State of Oregon, **BAC  
HOME LOAN SERVICING LIMITED  
PARTNERSHIP**, a Texas limited partnership,  
**MORTGAGE ELECTRONIC  
REGISTRATION SYSTEM, INC.**, a  
Delaware corporation, **NORTHWEST  
MORTGAGE GROUP, INC.**, an Oregon  
corporation,

Defendants.

Case No.

**DECLARATION OF DOLORES JUHASZ**

EXHIBIT 2

PAGE 1

I, Dolores Juhasz, hereby declare as follows:

1. I am employed by BAC Home Loans Servicing, L.P. ("BAC"). In my current position as Litigation Specialist, my responsibilities include monitoring and assisting with litigated default home loan servicing matters. The information set forth in this Declaration is true and correct to the best of my knowledge and belief, based upon records and information kept in the ordinary course of BAC's business, and, if called as a witness, I could and would testify competently to them.

2. BAC is responsible for servicing the mortgage loan at issue in the above-captioned complaint.

3. Plaintiffs Douglas A. James and Eileen James obtained a mortgage with an original principal amount of \$346,438.00 on June 19, 2007, secured by the real property located at 30366 SW Ruth Street Unit 70, Wilsonville, Oregon 97070. According to BAC's records, as of February 17, 2011, the current principal balance of the loan is \$336,479.26.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed at West Hills, CA this 10th day of March, 2011.

  
Dolores Juhasz  
Litigation Specialist  
BAC Home Loans Servicing, L.P.

EXHIBIT 2  
PAGE 2



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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF CLACKAMAS

6 **DOUGLAS A. JAMES and EILEEN M.**  
7 **JAMES, Husband and Wife,**

8 Plaintiffs,

9 vs.

10 **RECONTRUST COMPANY**, an Unknown  
11 Entity Operating in the State of Oregon, **BAC**  
12 **HOME LOAN SERVICING LIMITED**  
13 **PARTNERSHIP**, a Texas Limited  
14 Partnership, **MORTGAGE ELECTRONIC**  
15 **REGISTRATION SYSTEM, INC** a  
Delaware Corporation, **NORTHWEST**  
**MORTGAGE GROUP, INC.** an Oregon  
Corporation,

Defendants.

Case No. CV11020389

NOTICE TO ADVERSE PARTY OF  
REMOVAL OF ACTION TO UNITED  
STATES DISTRICT COURT FOR THE  
DISTRICT OF OREGON

16 **TO: Plaintiffs, plaintiffs' attorney William T. Scannell, and Clerk of the Circuit Court of**  
17 **the State of Oregon, County of Clackamas**

18 PLEASE TAKE NOTICE that on March 16, 2011, defendants ReconTrust Company,  
19 N.A., BAC Home Loans Servicing, LP, and Mortgage Electronic Registration Systems, Inc. filed  
20 a Notice of Removal of this action in the United States District Court for the District of Oregon,  
21 Portland Division. A true and correct copy of the underlying Notice of Removal is attached  
22 hereto as Exhibit 1 for lodging in the Court's filing of this matter.  
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26

PAGE 1 - NOTICE TO ADVERSE PARTY OF REMOVAL OF ACTION TO UNITED  
STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

1 Pursuant to 28 U.S.C. § 1446(d), the filing of this notice "shall effect the removal and the  
2 State court shall proceed no further unless and until the case is remanded" to this Court by the  
3 United States District Court.

4 DATED: March 16, 2011

5 LANE POWELL PC

6  
7 By Megan Smith  
8 Pilar C. French, OSB No. 962880  
9 Megan E. Smith, OSB No. 084758  
10 docketing-pdx@lanepowell.com  
11 Attorneys for Defendants ReconTrust Company,  
12 N.A., BAC Home Loans Servicing, LP, and  
13 Mortgage Electronic Registration Systems, Inc.  
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PAGE 2 - NOTICE TO ADVERSE PARTY OF REMOVAL OF ACTION TO UNITED  
STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

1  
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on March 16, 2011, I caused to be served a copy of the foregoing  
4 NOTICE TO ADVERSE PARTY OF REMOVAL OF ACTION TO UNITED STATES  
5 DISTRICT COURT FOR THE DISTRICT OF OREGON on the following person(s) in the  
6 manner indicated below at the following address(es):

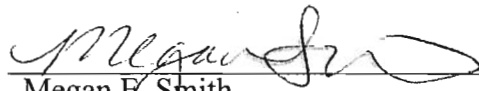
7 Terry Scannell, Esq.  
8 888 SW Fifth Avenue, Suite 650  
9 Portland, OR 97204  
10 Facsimile: (503) 274-1214  
11 E-Mail: terry@scannellaw.com

12 *Attorney for Plaintiffs*

Robert J. Pratte, Esq. (pending pro hac vice)  
DLA Piper LLP  
90 S Seventh Street, Suite 5100  
Minneapolis, MN 55402-4168  
Facsimile: (612) 524-3070  
E-Mail: robert.pratte@dlapiper.com

*Attorney for Mortgage Electronic Registration  
Systems, Inc.*

13 ☐ by CM/ECF  
14 ☐ by Electronic Mail  
15 ☐ by Facsimile Transmission  
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17 ☐ by Hand Delivery  
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Megan E. Smith

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I hereby certify that on March 16, 2011, I caused to be served a copy of the foregoing NOTICE OF REMOVAL on the following person(s) in the manner indicated below at the following address(es):

Terry Scannell, Esq.  
888 SW Fifth Avenue, Suite 650  
Portland, OR 97204  
Facsimile: (503) 274-1214  
E-Mail: terry@scannellaw.com

*Attorney for Plaintiffs*

Robert J. Pratte, Esq. (pending pro hac vice)  
DLA Piper LLP  
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*Attorney for Mortgage Electronic Registration  
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- ☐ by **Overnight Delivery**

  
\_\_\_\_\_  
Megan E. Smith